

REVIEW OF INTELLIGENCE EXPENDITURES

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Summary of Issue

Congressional oversight of U.S. intelligence agencies and their activities is limited by restrictions on the information available to the Congress. These restrictions are self-imposed to the extent that they are the result of

- (1) statutes enacted by Congress,
- (2) executive orders on classified information to which the Congress has acquiesced by not enacting superseding legislation, and
- (3) a traditional policy of self-restraint in obtaining the information which would be available upon demand.

One such restriction is the inability of the General Accounting Office to conduct meaningful reviews of intelligence agency programs and expenditures. In his testimony before this Committee on July 31st, the Comptroller General, Mr. Staats, explained that there are statutory provisions, especially regarding the CIA, which have been interpreted to limit GAO access to records of federal spending for intelligence purposes.

On the basis of materials already provided, the Committee may conclude that most members of Congress are uninformed about the allocation of money to be spent for intelligence. On the basis of these materials, the Committee may also conclude that the statutory restrictions on GAO activity serve to limit the information available to most members on how that money has been spent.

### Authority of the General Accounting Office

In recent years, Congressional oversight of the executive branch has benefited increasingly from the studies and audits conducted by the General Accounting Office, either on GAO's own initiative or at the request of members or committees of Congress.

31 U.S.C. 67(a) imposes the following duty on the GAO: (see Appendix 1)

Except as otherwise specifically provided by law, the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States....

31 U.S.C. 54 imposes the following complementary obligation on executive departments and agencies: (see Appendix 2)

All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; ... The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this title.

The GAO was established by the Budget and Accounting Act of 1921 and, until relatively recently, limited its activities to rather narrowly conceived audits. However, over the years, the Congress has expanded the scope of the studies GAO is authorized and directed to make. For example, the Legislative Reorganization Act of 1946 included the following provision (31 U.S.C. 60): (see Appendix 3)

The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the government (including Government corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. (emphasis added)

Studies addressed to the economy and efficiency of administration go well beyond the auditing mission of the GAO, as it had been originally conceived.

### Exemption of records of unvouchered expenditures

According to a study prepared for this Committee by the Library of Congress (see Appendix 4), "(n)owhere in the statutory language of the

laws setting up and prescribing the duties and functions of the GAO is there any reference to a specific exception in the case of agencies functioning in the area of intelligence collection or other intelligence-related activities. There are, however, statutory exceptions to be found in the legislation pertaining to intelligence agencies themselves as well as other executive departments."

Exceptions relating to the CIA have imposed the most severe restrictions on GAO activity. Most important is Section 10(b) of the Central Intelligence Agency Act of 1949 (see Appendix 5) which provides that:

The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

This provision permits the Director of Central Intelligence, at his discretion, to expend CIA funds "on the certificate of the Director," without having to maintain and provide the records normally required of federal expenditures. Further, the CIA and the GAO agree that all funds spent in this manner are not subject to audit and review by the GAO. In fact, in 1948, during hearings which led to passage of this act, it was the GAO's position that the exemption was justified by the importance and secrecy of the CIA's activities. But the consequence of this unique statutory authority has been to deny Congress the benefit of GAO examinations of CIA expenditures.

The contention of the CIA that records of "unvouchered" or "certificate" spending are not open to GAO audit has been accepted by the GAO. This position is supported by 31 U.S.C. 54 (quoted above) which provides that the Comptroller General's authority to examine department and agency records does not extend to expenditures made under section 107 of the same title. (see Appendix 6) Section 107 reads:

Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (emphasis added)

The language underscored explicitly excludes certificate spending, "for purposes of intercourse or treaty with foreign nations," from GAO scrutiny. By extension, GAO has accepted the position that all such spending is closed to its examination.

The Director of Central Intelligence has recently contended that he exercises his unvouchered spending authority with discretion and only to protect "intelligence sources and methods," as he is required to do by the National Security Act of 1947. In a letter to the GAO, dated 16 June 1975, Mr. Colby also asserted that CIA records of vouchered expenditures are available for GAO audit: (see Appendix 7)

It has been and it remains the policy of CIA to rely upon vouchered funds wherever possible. (Vouchered funds are those which can be accounted for and audited in conformance with the laws that apply to other Government agencies and with standard Government regulations and procedures.) Currently more than half of the Agency's appropriations are disbursed as vouchered funds....

From the beginning of CIA, records for all vouchered fund expenditures were made available to and were subject to a voucher audit by the GAO. Use of the voucher audit procedure allowed the GAO to examine expenditure and collection vouchers and related documents to determine whether expenditures were made legally and solely for the objects for which appropriations were made. Use of the voucher audit procedure also allowed CIA to protect those activities of a confidential, extraordinary, or emergency nature, i.e., intelligence sources and methods.

In the Comptroller General's testimony before this Committee, however, the GAO contended that it could not make meaningful examinations of CIA records and activities so long as the CIA continues to rely heavily on its unvouchered spending authority. (see Appendix 8) In support of this contention, the GAO cited its experiences between 1959 and 1962, when it attempted to conduct more comprehensive audits of CIA activities on a trial basis.

#### Impact of exemption on GAO activity

In 1959, the Comptroller General, Mr. Campbell, concluded that the GAO should either expand or discontinue the limited audits it was then conducting at the GAO. The DCI, Mr. Dulles, responded that the GAO would be denied access not only to unvouchered expenditures, but also to vouchered expenditures made in support of confidential operations:

A comprehensive audit of the sort now conducted by the General Accounting Office in other agencies, if applied to our so-called vouchered expenditures, would necessarily reach into the confidential operations which they support and which are protected by my special authority under Section 8 of the Act. In these instances, therefore, the comprehensive audit would have to be limited so as to remain outside the area of sensitive security operations.

After attempting to work within these ground-rules for two years, the Comptroller General concluded that:

under existing security restrictions on the General Accounting Office audit of CIA activities, we do not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress.

The CIA refused to change its position, and Chairman Carl Vinson of the House Armed Services Committee concluded that "the restrictions you met with in the Central Intelligence Agency are necessary for the proper performance of its intelligence activities and should be maintained." In 1962, therefore, the GAO discontinued its auditing program at CIA. (see Appendix 9 for the correspondence between the GAO, the CIA, and the House Armed Services Committee)

The situation has not changed substantially since 1962. At the request of members or committees of Congress, the GAO has attempted limited and sporadic studies of CIA and other intelligence community activity. Most notably, since 1955, several GAO staff members have been located at the National Security Agency to perform compliance audits, "that is, examining the financial accounting records and related documents together with limited effort in the procurement and contracting areas."

But the Comptroller General's continuing frustrations were expressed in a recent letter from Mr. Staats to the chairman of this Committee: (see Appendix 10)

In general, GAO has not taken the initiative in pressing for oversight of intelligence operations but has made serious efforts to assist the committee on a request basis. Even so, we continue to have serious difficulty in obtaining information from and about the intelligence community in those limited instances where intelligence information is germane to the issues we are addressing. On occasion, the community cooperates to the extent of giving us certain requested information but even then we are afforded insufficiently broad access to agency records to independently verify the accuracy and/or completeness of the material supplied to us, precluding us from reporting to the Congress in a way that would materially contribute to the exercise of its oversight function.

Possibly with the views of subcommittee chairman Kilday and committee chairman Vinson in mind, Mr. Staats continued:

We believe a strong congressional endorsement will be necessary to open the doors to intelligence data wide enough so that we can make the meaningful reviews of intelligence activities that would assist the Congress in performing its oversight function.

Extent of unvouchered spending authority

The statutory autonomy of the CIA is unique, in that there is no limit on the DCI's authority to expend funds on his own certificate. But, according to the Library of Congress study, the Federal Bureau of Investigation also enjoys limited certificate spending authority:

28 U.S.C. 537: Appropriations for the Federal Bureau of Investigation are available for expenses of unforeseen emergencies of a confidential character, when so specified in the appropriation concerned, to be spent under the direction of the Attorney General. The Attorney General shall certify the amount spent that he considers advisable not to specify, and his certification is a sufficient voucher for the amount therein expressed to have been spent.

Similar authority has also been vested in departments and agencies outside the intelligence community, as well as in each of the armed services for "emergency and extraordinary expenses." According to a compilation prepared by the GAO's Office of the General Counsel, limited certificate spending authority has been granted by statute to the Immigration and Naturalization Service, the Peace Corps, and to the District of Columbia government (at least prior to home rule). (see Appendix 11)

A more recent study by Louis Fisher of the Library of Congress also notes that some certificate or discretionary spending authority has been granted to the Superintendent of the U.S. Merchant Marine Academy, the Drug Enforcement Administration, the Commandant of the U.S. Coast Guard, the Secretary of the Treasury, and the Administrator of NASA, and, in previous years, the Bureau of Customs and the U.S. Secret Service. No other agency or official, however, enjoys the broad and continuing discretionary authority granted to the CIA under 50 U.S.C. 403j(b).

Mr. Fisher is recognized as one of the foremost authorities on presidential spending powers. In his study, attached as Appendix 12, he describes the different forms of confidential funds and the consequent difficulty in identifying and locating them:

There are different types of confidential funds. The first, and most numerous, consists of a two-step process: authorization in substantive legislation, followed by funding in an appropriation act. Generally the authority is of a long-term nature, requiring appropriations from year to year. In the case of the National Aeronautics and Space Administration, dependent on annual authorizations, the authority must be renewed each year.

Second, funds are sometimes appropriated for confidential expenditures without the support of authorizing legislation. Unless a special rule has been adopted to protect the fund, any Member of Congress may raise a point of order against the fund on the ground that it represents legislation in an appropriations bill. A number of parliamentary challenges have been made on



that basis in recent years.

Third, in the case of foreign assistance, there is substantive authority for confidential spending. However, specific sums are not appropriated for that purpose. Of the funds regularly appropriated each year, a portion (specified in the substantive legislation) may be spent for confidential purposes.

Fourth, there are cases where substantive authority exists for confidential spending but Congress does not appropriate funds. The authority is latent, awaiting the necessary appropriation.

The existence of four categories makes it difficult to locate confidential funds. To look through appropriations acts would uncover only a portion. It is not always clear from the act that the funds may be spent with certificates. Occasionally a marginal note or a citation in the appropriation language will refer the reader to a statute that expressly states the confidentiality. Often it is necessary to rely on staffers in the Appropriations Committees or in the agencies to make the connection between authorizing language and an appropriation account.

At the request of Senator Schweiker, Mr. Fisher prepared a table of confidential funds included in the President's budget for FY 1975, attached as Appendix 13. Neither his study nor this table includes the certificate spending authority vested in the Director of Central Intelligence.

In sum, then, (1) the GAO does not have access to records of unvouchered spending, (2) all CIA funds may be expended by certificate, (3) this authority is exercised frequently enough to preclude meaningful GAO audits and studies, and (4) various other departments and agencies, in and out of the intelligence community, enjoy more limited discretionary spending authority.

#### Other potential restrictions on the GAO

In addition, there are several statutory provisions which could also limit GAO access to the records of the CIA and the NSA.

First, Section 102(d)(3) of the National Security Act of 1947 requires the Director of Central Intelligence to protect intelligence "sources and methods." As noted above (see Appendix 7), in a recent letter to the Comptroller General, Mr. Colby has asserted a connection between this responsibility and his reliance on unvouchered spending authority to protect "activities of a confidential, extraordinary, or emergency nature."

Even if the GAO obtains a general right of access to records of unvouchered spending, the DCI would possibly assert his "sources and methods" responsibility as a second and independent basis for refusing GAO access.

Second, there are statutory provisions concerning both the CIA and the NSA which exempt the agencies from requirements to disclose informa-

tion concerning agency organization, functions and personnel. (see Appendix 14) These provisions may be interpreted as authority to deny such information to the Congress or to the GAO, acting as its agent.

In response to an inquiry from this Committee's staff, the Department of Defense has transmitted a letter from the NSA which seems to reject such an interpretation. (see Appendix 15)

A similar inquiry was addressed to the CIA on August 26th, but there has been no reply to date. However, the Committee has received a copy of a letter, dated 14 January 1975, from the DCI, Mr. Colby, to Mr. Robert Keller, Deputy Comptroller General. (see Appendix 16) With regard to restraints "governing the reporting of information related to CIA budgetary, organizational and personnel matters," Mr. Colby cites both Section 102(d)(3) of the National Security Act of 1947--concerning protection of "intelligence sources and methods"--and Section 6 of the Central Intelligence Agency Act of 1949--concerning the publication or disclosure of information concerning the Agency.

Although the precise meaning of this letter is unclear, it does suggest that either or both provisions may be interpreted by the CIA as authority to withhold information from the Congress and/or the GAO.

#### Alternative recommendations

Access by the Congress to information from the intelligence agencies will be considered separately. However, the Committee may view the General Accounting Office as an adjunct of the Congress, and conclude that the relationship between the GAO and the intelligence community has an important potential impact on the future of Congressional oversight.

The Committee will recognize an inevitable tension between the interest of the CIA and other intelligence agencies to minimize dissemination of sensitive intelligence information and the interest of the GAO (and its principal, the Congress) to obtain the information necessary for it to perform the functions which it is authorized by law to undertake. (The distribution of GAO reports based upon such sensitive information is only one aspect of the general issue of Congressional management of information classified under executive order, on which materials will be provided separately.)

The Committee may conclude that, on balance, the benefits of expanded GAO activity would be outweighed by the increased security problems that would follow. Consequently, the Committee may choose to make no recommendations concerning the GAO and the unvouchered spending authority of the CIA and other agencies.

#### "Sources and methods" and "non-disclosure"

Alternatively, the Committee may conclude that the "sources and methods" and two "non-disclosure" provisions discussed above were not

or should not be interpreted as grounds for withholding information from the GAO. These three provisions may be amended, therefore, to provide that:

1. they shall not apply to the GAO; or
2. they shall not apply to the GAO when acting at the direct, written request of any member or committee of Congress; or
3. they shall not apply to the GAO when acting at the direct, written request of a committee of Congress with appropriate legislative and/or oversight jurisdiction.

#### Records of unvouchered spending

In addition, the Committee may recommend that the GAO should be allowed access to records of unvouchered expenditures by (1) the CIA only, (2) all intelligence agencies, or (3) all departments and agencies of the government.

As noted earlier, the CIA's unvouchered spending authority is qualitatively different from the comparable authority enjoyed by other agencies. For the Department of Defense and other agencies, this authority is generally limited to a specified contingency fund, and its exercise may require the approval of a superior official--e.g., the Attorney General in the case of the FBI. The Committee may therefore limit its recommendation to the CIA. Alternatively, the Committee may conclude that (1) no expenditure records should be withheld from the GAO, and (2) it would be anomalous to provide greater GAO access to records of the CIA than to those of other agencies whose expenditures are less sensitive. Therefore, the Committee may decide to make recommendations concerning unvouchered spending authority in general.

However the Committee resolves this question, its recommendation, if any, concerning unvouchered spending authority may take several different forms.

First, the Committee may recommend that provisions for unvouchered spending authority be repealed and prohibited. It may be argued that vouchers are normally required for federal expenditures in order to permit independent verification that these funds have been spent legally and properly. In the case of intelligence and other national security agencies, unvouchered spending authority is unnecessary to protect intelligence sources and methods, for example, because there already exists an extensive system of classification and compartmentation.

On the other hand, the Committee may conclude that it would be impractical to demand that formal vouchers be filed for all expenditures, including those to intelligence agents or for covert action operations. Therefore, the Committee may recommend that unvouchered spending authority be retained, but that the GAO should have access to records of such spending under some or all circumstances.

Second, the Committee may decide that the GAO should have access to records of unvouchered spending authority on its own initiative, or only at the express direction either of any member or committee of Congress or of only a committee with appropriate oversight and/or legislative jurisdiction.

Third, the Committee may recommend that GAO access shall only be for the purpose of conducting audits, or for any purpose within the GAO's statutory mandate, including studies of agency efficiency and economy.

Fourth, the Committee may consider whether the GAO's right of access should be unrestricted or whether it should be subject to independent review. For example, Section 634(c) of the Foreign Assistance Act of 1961, as amended, provides that funds are to be cut off if information concerning operations under the Act is not provided within 35 days of a request by the GAO or an appropriate committee of Congress, in the absence of "a certification by the President that he has forbidden the furnishing thereof pursuant to request and his reason for doing so." (see Appendix 17) This provision provides for a review and possible veto by the President, independent of the bodies possessing and seeking the information in question.

The Committee may wish to consider such a provision in the case of GAO access to records of unvouchered spending. The Committee will note, however, that the effect of this appeal procedure is to leave the final determination with the executive branch.

If the Committee wishes to provide an appeal procedure but to leave the final determination to the Congress, it may provide that, if an agency head does not wish to accede to a GAO request for access to records of unvouchered spending, the records in question shall be provided to the committee or committees of Congress with appropriate jurisdiction, which shall then determine whether all or part of the requested records should be provided to the GAO. The issue would then become one of Congressional access to executive branch information and the subsequent disposition of information in the possession of Congress. Provision might also be made for other members of Congress to oppose the committee's decision and demand that it be reconsidered.

Legislation has been introduced in both houses during the 94th Congress concerning GAO access to records of certificate spending. Three such bills are attached as Appendix 18: S. 653, introduced by Senator Proxmire; H.R. 1523, introduced by Representative Eckhardt; and S. 1817, introduced by Senator Schweiker, a member of the Senate's select committee on intelligence. During the past few years, Mr. Eckhardt has been particularly active in challenging the wisdom of provisions for certificate spending authority.

If the Congress determines that the GAO should have access to most or all of the sensitive information held by intelligence agencies, secu-

rity procedures should not be especially difficult to establish. It could be accomplished, for example, by allowing the intelligence agencies to maintain physical control of the records, and by providing secure work space for the GAO within the intelligence agencies' own facilities. This is essentially the arrangement between GAO and the NSA.

Finally, the Committee should note that Senator Metcalf's subcommittee of the Senate Government Operations Committee has begun hearings on several bills concerning GAO, including S. 2268, "The General Accounting Office Act of 1975." This Committee's staff has informally provided the Senate subcommittee staff with information concerning GAO access to records of unvouchered spending, but without firm assurance or evidence to date that this matter will be considered by the Senate. It is not covered by any of the bills now before the subcommittee. Although the House Committee on Government Operations has not yet scheduled similar hearings, it is at least possible that major legislation may develop before this Committee is scheduled to submit its final report in January.

It is also possible that proposals for specific changes in GAO's authority may become entangled in a dispute as to whether the GAO is in fact an arm of the Congress or an independent agency of the government, not directly accountable either to the Congress or to the executive branch. For example, a bill pending before the Senate subcommittee would provide that future Comptrollers General be appointed by the Congress and removable by resolution of either house. This Committee's interest in expanding GAO's authority may be influenced by the outcome of this debate.

### SUBCHAPTER III—AUDIT OF FINANCIAL TRANSACTIONS OF EXECUTIVE, LEGISLATIVE, AND JUDICIAL AGENCIES

#### § 67. Duty of General Accounting Office.

(a) Rules and regulations of Comptroller General; principles and practices to be considered.

Except as otherwise specifically provided by law, the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of auditing procedures to be followed and the extent of examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices of the respective agencies.

(b) Retention by executive agencies and Architect of the Capitol of accounts of accountable officers, contracts, vouchers or other documents.

Whenever the Comptroller General determines that the audit shall be conducted at the place or places where the accounts and other records of an executive agency or the Architect of the Capitol are normally kept, he may require any executive agency or the Architect of the Capitol to retain in whole or in part accounts of accountable officers, contracts, vouchers, and other documents, which are required under existing law to be submitted to the General Accounting Office, under such conditions and for such period not exceeding ten years as he may specify, unless a longer period is agreed upon with the executive agency or the Architect of the Capitol: *Provided*, That under agreements between the Comptroller General and legislative (other than the Architect of the Capitol) and judicial agencies the provisions of this sentence may be extended to the accounts and records of such agencies.

(c) Audit of financial transactions of Architect of the Capitol; reports to Congress.

The Comptroller General in auditing the financial transactions of the Architect of the Capitol shall make such audits at such times as he may deem appropriate. For the purpose of conducting such audits, the provisions of section 54 of this title shall be applicable to the Architect of the Capitol. The Comptroller General shall report to the President of the Senate and to the Speaker of the House of Representatives the results of each such audit. All such reports shall be printed as Senate documents. (Sept. 12, 1950, ch. 946, title I, pt II, § 117, 64 Stat. 837; Aug. 20, 1964, Pub. L. 88-454, § 105(a), 78 Stat. 551.)

#### AMENDMENTS

1964—Subsec. (b). Pub. L. 88-454 included the Architect of the Capitol within the scope of the subsection, and inserted the words "(other than the Architect of the Capitol)" following "legislative" in the proviso.

Subsec. (c). Pub. L. 88-454 added subsec. (c).

#### CROSS REFERENCES

Accounts of United States officers and agents, see section 496 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 104a.

### Chapter 2—AUDIT AND SETTLEMENT OF ACCOUNTS

- Sec.
- 71. Public accounts to be settled in General Accounting Office.
  - 71a. Same; limitation of time on claims and demands.
  - 72. Same; settlement of accounts.
  - 73. Repealed.
  - 74. Certified balances of public accounts; conclusiveness; suspension of items; preservation of adjusted accounts; decision upon questions involving payment.
  - 75. Regulations for carrying out provisions.
  - 76. Requisitions for advances.
  - 77. Charging warrants to appropriation specified.
  - 78. Rendition of current accounts.
  - 79. Transmission of accounts of courts in Alaska to Department of Justice.
  - 80. Administrative examination of accounts of Army expenditures.
  - 80a. Same; extension of time during war or emergency.
  - 80b. Administrative examination of accounts of United States Marine Corps expenditures.
  - 80c. Administrative examination of accounts of Navy expenditures; extension of time during war or emergency.
  - 81. Transmission of accounts of marshals.
  - 82. Administrative examination of accounts.
  - 82a. Lists of persons receiving periodic payments; vouchers.
  - 82a-1. Relief of accountable officers of liability for loss.
  - 82a-2. Relief of accountable officers of liability for illegal, improper, or incorrect payments.
  - 82b. Disbursing officers of executive branch of the Government; examination of vouchers.
  - 82b-1. Statistical sampling procedures in examination of vouchers for amounts of less than \$100; liability of certifying or disbursing officers and recipients for illegal, improper, or incorrect payments; collection actions against recipients.
  - 82c. Certifying officers; bond; accountability; relief by Comptroller General.
  - 82d. Same; exemption of liability.
  - 82e. Disbursing officers excepted from sections 82b, 82c to 82e of this title.
  - 82f. Certifying and disbursing officers' accountability for correctness of computations of certified vouchers.
  - 82g. Disbursing or certifying officer; exemption from liability for overpayments for transportation.
  - 82h. Disbursing and certifying officers; exemption from liability for advances to defense relocation corporations.
  - 82i. Limitation of time for final settlement of monthly or quarterly accounts of fiscal officers by General Accounting Office; suspension during war.
  - 82j. Certifying officers of terminated war agencies in liquidation in Treasury Department; exemption from liability.
  - 82k. Certifying officers of terminated war agencies in liquidation in Commerce Department; exemption from liability.
  - 82l. Certifying officers of terminated war agencies in liquidation in Interior Department; exemption from liability.
  - 82m. Same; definition.
  - 82n. Certifying officers of terminated war agencies in liquidation in Labor Department; exemption from liability.
  - 82o, 82p. Omitted.
  - 83. Administrative audit of accounts under Department of Justice.
  - 84. Rendition of accounts of officers of courts.
  - 85. Transmission of accounts of expenditures in Territories or property of the Interior.
  - 86. Accounts without administrative examination.
  - 87. Papers transmitted with accounts of customs officers.
  - 88. Reexamination of disallowed claims.
  - 89. Property returned by officers.
  - 90. Same; certificate as to lost property.

## Appendix 2

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§ 52a

## TITLE 31.—MONEY AND FINANCE

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ernment Organization and Employees, the President exercised this authority with respect to many previously excepted positions.

For positions now covered by the classified civil service, see section 5102 of Title 5. For the power of the Civil Service Commission to determine the applicability of that section to specific positions, see section 5103 of Title 5.

A provision of act July 31, 1894, ch. 174, § 1, 28 Stat. 173, requiring law clerks in the offices of the Comptroller of the Treasury and the several Auditors to be skilled in the law, and appointed in the same manner as chiefs of division, was omitted from the Code as obsolete, and superseded, so far as it related to appointments, by subsec. (a) of this section.

R. S. § 279, authorizing the second Auditor to detail a clerk to sign certificates and papers under laws relating to bounties, but making the Auditor responsible for the clerk's acts, and act March 2, 1895, ch. 177, § 1, 28 Stat. 776, 777, so far as it authorized the Chief Clerk in the office of the Comptroller of the Treasury to sign such letters and papers as the Comptroller might direct, required law clerks in the offices of the Comptroller of the Treasury and the Auditors to perform clerical duties, and authorized the Secretary of the Treasury to delegate to any officer not below the grade of fourth class clerk authority to perform the duties of deputy auditor in case of sickness or absence of the deputy auditor, were omitted from the Code as obsolete, or superseded by subsec. (d) of this section.

Act July 31, 1894, ch. 174, § 4, 28 Stat. 205, requiring the chief clerk to perform such duties as might be assigned to him by the Comptroller of the Treasury, and giving him power to countersign warrants except accountable warrants, act March 4, 1909, ch. 297, § 1, 35 Stat. 866, authorizing the designation of employees in the office of the Auditor for the Post Office Department to countersign warrants and drafts, and act July 3, 1913, ch. 130, § 1, 40 Stat. 758, authorizing the Chief Clerk in the office of the Comptroller of the Treasury to sign all classes of warrants, were omitted as obsolete, or superseded by subsec. (d) of this section, or section 56 of this title.

## REPEALS

Act Mar. 4, 1923, ch. 265, 42 Stat. 1488, formerly carried as a credit to this section, was repealed by section 1106 (a) of act Oct. 28, 1949.

## CROSS REFERENCES

Application of general compensation provisions to employees of the General Accounting Office, see section 46a of this title.

§ 52a. Repealed. June 28, 1955, ch. 169, § 12 (c) (4), 69 Stat. 180.

Section, acts Aug. 31, 1951, ch. 376, title I, § 101, 65 Stat. 274; July 5, 1952, ch. 578, title I, § 101, 66 Stat. 399; June 24, 1954, ch. 359, title I, § 101, 68 Stat. 280, authorized the Comptroller General to place five positions in grade GS-18, two in GS-17, and twelve in GS-16 of the General Schedule established by the Classification Act of 1949.

§ 53. Investigations and reports by Comptroller General.

(a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Office of Management and Budget as it may request from time to time. (June 10, 1921, ch. 18, title III, § 312, 42 Stat. 25; 1970 Reorg. Plan No. 2, 35 F.R. 7959, 84 Stat. —)

## CHANGE OF NAME

The Bureau of the Budget was designated as the Office of Management and Budget and offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. See Part I of Reorganization Plan No. 2 of 1970, set out as a note under section 16 of this title.

§ 54. Information furnished to Comptroller General by departments and establishments.

All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this title. (June 10, 1921, ch. 18, title III, § 313, 42 Stat. 26.)

## CODIFICATION

Section superseded a provision in act Feb. 19, 1897, ch. 265, § 1, 29 Stat. 550, that all books, papers, and other matters relating to the office or accounts of disbursing officers of the Departments, and commissions, boards, and establishments of the Government in the District of Columbia, should be subject to inspection, and examination by the Comptroller of the Treasury, and the Auditor authorized to settle such accounts, or the duly authorized agents of either; and also a somewhat similar provision in act March 15, 1898, ch. 68, § 5, 30 Stat. 318.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 67 of this title.

§ 55. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

Section, act June 10, 1921, ch. 18, title III, § 314, 42 Stat. 26, required the establishment of a register for accountants for the General Accounting Office.

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# TITLE 31.—MONEY AND FINANCE

§ 60

## § 56. Designation of person to sign warrants.

The Comptroller General is authorized to designate such person or persons in his office as may be required from time to time to countersign in his name such classes of warrants as he may direct. (Mar. 4, 1909, ch. 297, § 1, 35 Stat. 866; May 29, 1920, ch. 214, § 1, 41 Stat. 647; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

### CODIFICATION

Section constituted a provision of the Legislative, Executive and Judicial Appropriation Act for the Fiscal Year 1921, and was not enacted as a part of the Budget and Accounting Act, 1921, which comprises this chapter.

### REPEALS

R. S. § 275 authorized the Second Comptroller to detail one clerk to sign certificates and papers relating to bounties. It was repealed by act July 31, 1834, ch. 174, § 7, subd. 3, 28 Stat. 206.

See, also, Historical Note to section 52 of this title.

### TRANSFER OF FUNCTIONS

The duties and powers of the Comptroller of the Treasury and the Auditor for the Post Office Department, except the administrative examination of accounts and vouchers, were transferred to the General Accounting Office, which is under the direction and control of the Comptroller General, by act June 10, 1921.

### POST OFFICE DEPARTMENT

Provision for the designation of employees in the office of the Auditor for the Post Office Department to countersign warrants and drafts, was contained in act Mar. 4, 1909.

§ 57. Repealed. Pub. L. 86-862, § 12(c), Sept. 2, 1960, 74 Stat. 704, amended Pub. L. 87-646, § 20, Sept. 7, 1962, 76 Stat. 446.

Section, act Mar. 4, 1913, ch. 142, § 1, 37 Stat. 754; 1949 Reorg. Plan No. 3, §§ 1(a), 5(a), 6, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1066, related to leaves of absence for piece-rate employees of the Post Office Department.

## § 58. Leaves of absence; piece-rate employees.

### CODIFICATION

Section, act Mar. 4, 1913, ch. 142, § 1, 37 Stat. 754, was transferred to section 57 of this title, which was subsequently repealed.

## § 59. Studies by Comptroller General of restrictions in general appropriation Acts; reports to Congress.

The Comptroller General is authorized and directed to make a full and complete study of restrictions placed in general appropriation Acts limiting the expenditure of specified appropriations therein, with a view to determining the cost to the Government incident to complying with such restrictions, and to report to the Congress his estimate of the cost of complying with such restrictions and such other recommendations with respect thereto as he deems necessary or desirable. (Aug. 2, 1946, ch. 753, title II, § 205, 60 Stat. 837.)

### CODIFICATION

Section was enacted as a part of the Legislative Reorganization Act of 1946, and not as a part of the Budget and Accounting Act, 1921, which comprises this chapter.

### EFFECTIVE DATE

Effective date, see note set out under section 72a of Title 2, The Congress.

## § 60. Analyses of executive agencies' expenditures by Comptroller General; reports to Congressional committees.

The Comptroller General is authorized and directed to make an expenditure analysis of each

agency in the executive branch of the Government (including Government corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Government Operations, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses. (Aug. 2, 1946, ch. 753, title II, § 206, 60 Stat. 837.)

### CODIFICATION

Section was enacted as a part of the Legislative Reorganization Act of 1946, and not as a part of the Budget and Accounting Act, 1921, which comprises this chapter.

### CHANGE OF NAME

The name of the House Committee on Expenditures in the Executive Departments was changed to the House Committee on Government Operations by H. Res. 647 of the 82d Congress, adopted July 3, 1952.

The name of the Senate Committee on Expenditures in the Executive Departments was changed to the Senate Committee on Government Operations by action of the Senate on Mar. 3, 1952 (Senate Journal 127, 82d Cong., 2d sess.).

### EFFECTIVE DATE

Effective date, see note set out under section 72a of Title 2, The Congress.

## Chapter 1A.—ACCOUNTING AND AUDITING

### SUBCHAPTER I.—GENERAL PROVISIONS

#### Sec.

- 65. Congressional declaration of policy.
- 65a. Definition of "executive agency".
- 65b. Designation of places for administrative examination of officers' accounts; waiver of examination.

### SUBCHAPTER II.—ACCOUNTING AND REPORTING IN EXECUTIVE AGENCIES

- 66. Standards and systems.
  - (a) Determination by Comptroller General; scope of requirements; continuation of authority.
  - (b) Cooperation by General Accounting Office in development of systems; approval by Comptroller.
  - (c) Review of systems by General Accounting Office; availability of results; reports to Congress.
- 66a. Establishment and maintenance of systems.
  - (a) Duties of agency heads; information and controls to be covered.
  - (b) Conformation with standards and requirements prescribed by Comptroller.
  - (c) Accrual basis.
- 66b. Financial reports.
  - (a) Preparation by Secretary of Treasury; inclusion of required data; information to be furnished by agencies.
  - (b) Establishment of unified system of accounting and reporting in Treasury Department; exercise of authority under other laws.
  - (c) Conformation of central system with standards and requirements prescribed by Comptroller.
- 66c. Receipt, retention, and disbursement of public funds.
  - (a) Waiver, by regulations, of requirements of existing law.
  - (b) Regulations for payment of vouchers by disbursing officers; provision for action in event of delinquency.
- 66d. Discontinuance of certain accounts in General Accounting Office.





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WASHINGTON, D.C. 20540


September 16, 1975

To: House Select Committee on Intelligence  
Attn: Stanley Bach  
Jackie Hess

From: American Law Division

Subject: The Right of Access of the General Accounting Office to Intelligence Agency Data.

Attached is a memorandum briefly discussing the right of access of the General Accounting Office to the files and information in the possession of the various organizations of the intelligence community.

  
Kent M. Rohnovde  
Legislative Attorney



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WASHINGTON, D.C. 20540

THE RIGHT OF ACCESS OF THE GENERAL ACCOUNTING OFFICE  
TO INTELLIGENCE AGENCY DATA

The General Accounting Office (GAO) was created by the Budget and Accounting Act of 1921. 42 Stat. 20; 31 U.S.C. 1 et seq. (1970). It was vested with all the powers and duties of its predecessors, the six auditors and the Comptroller of the Treasury. Since that time, several pieces of legislation have broadened its reporting requirements and auditing activities. <sup>1/</sup> The GAO was set up to be "independent of the executive departments"; <sup>2/</sup> its basic purposes are to "assist the Congress, its committees, and its Members to carry out their legislative and overseeing responsibilities, consistent with its role as an independent non-political agency in the legislative branch; carry out legal, accounting, auditing, and claims

<sup>1/</sup> See: Government Corporation Control Act, 59 Stat. 597 (1945); 31 U.S.C. 841 et seq. (1970). Legislative Reorganization Act of 1946, Section 206, 60 Stat. 837; 31 U.S.C. 60 (1970). Budget and Accounting Procedures Act of 1950, 64 Stat. 832; 31 U.S.C. 65; 16 U.S.C. 452, 24 U.S.C. 278; 31 U.S.C. 2, 11, 14, 16, 18a, 18b, 22-24, 65-67, 581-581c; 624, 719, 847 (1970). Legislative Reorganization Act of 1970, Title II, 84 Stat. 1140; 31 U.S.C. 1151-57, 1171-76 (1970). Federal Election Campaign Act of 1971, 85 Stat. 3; 2 U.S.C. 431 et seq., 47 U.S.C. 801 et seq. (Supp. 1973). Presidential Election Campaign Fund Act, of 1966, 80 Stat. 1539; 26 U.S.C. 6096, 31 U.S.C. 971-73 (1970). Presidential Campaign Fund Act. 85 Stat. 497 (1971); 26 U.S.C. 9001 et seq. (Supp. 1973)

<sup>2/</sup> 31 U.S.C. 41 (1970)

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settlement functions with respect to Federal Government programs and operations as assigned by the Congress; and make recommendations designed to make Government operations more efficient and effective." <sup>3/</sup>

The mission of the GAO under the Comptroller General in the area of investigations and reports is set out at 31 U.S.C. 53 (1970):

- a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts, and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.
- b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committee of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.
- c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

3/ United States Government Manual 1974-75 at 44.

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- d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.
- e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget [now Office of Management and Budget] as it may request from time to time. June 10, 1921, c. 18, Title III, Sec. 312, 42 Stat. 25.

The Comptroller General is specifically assigned the task of making expenditure analyses of executive agencies and to furnish such reports to congressional committees. No agencies are exempted in the statute (31 U.S.C. 60), which provides:

The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Government Operations, to the Appropriations Committees, and to the Legislative Committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses. Aug. 2, 1946, c753 Title II, Sec. 206, 60 Stat. 837.

Compliance by executive agencies with requests for information and data from the Comptroller General is also required by statute (31 U.S.C. 54), and only one limitation is placed on the demands which may be made:

All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization financial transactions, and methods of

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business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this Title. June 10, 1921, c. 18, Title III, Sec. 313, 42 Stat. 26.

31 U.S.C. 107 (1970) provides that:

Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. R.S. Sec. 291; June 10, 1921, c. 18, Title III, Sec. 304, 42 Stat. 24.

31 U.S.C. 107 (a) provides for the delegation of the authority to account by certificate:

The Secretary of State may delegate to subordinate officials the authority vested in him by section 107 of this title pertaining to certification of expenditures. Aug. 5, 1953, c. 328, Title I, Sec. 101, 67 Stat. 368.

The authority of the President to so spend on certificate alone derives from the Act of February 9, 1973, c. 4, Sec. 2, 1 Stat. 300. While this is the only such spending specifically exempted under 31 U.S.C. 54, other legisla-

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tion has been passed which authorizes certificate spending for other agencies as well.

Despite language seeming to bestow very broad authority upon the GAO to gain access to executive agency data, there are two provisions of law which reveal a degree of recognition that procedures may have to be tailored in some measure to the particular agency under scrutiny. In its "declaration of policy" in the Accounting and Auditing Act of 1950, Congress declares as policy that "full consideration be given to the needs and responsibilities of both the legislative and executive branches in the establishment of accounting and reporting systems and requirements." 31 U.S.C. 65 (b) (1970). The scope of GAO inquiry is to some degree to be a decision of the Comptroller General.

It is declared to be policy that "emphasis be placed on effecting orderly improvements resulting in simplified and more effective accounting, financial reporting, budgeting, and auditing requirements and procedures and on the elimination of those which involve duplication or which do not serve a purpose commensurate with the costs involved." (Italics added) 31 U.S.C. 65 (c) (1970). And 31 U.S.C. 67(a) (1970) reinforces this policy of vesting some discretion in the Comptroller General:

Except as otherwise specifically provided by law, the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of auditing procedures to be followed and the extent of

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examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices of the respective agencies. Sept. 12, 1950, c. 946, Title I, pt. II, Sec. 117, 64 Stat. 837.

Nowhere in the statutory language of the laws setting up and prescribing the duties and functions of the GAO is there any reference to a specific exception in the case of agencies functioning in the area of intelligence collection or other intelligence-related activities.

There are, however, statutory exceptions to be found in the legislation pertaining to intelligence agencies themselves as well as other executive departments. The CIA is so exempted under 50 U.S.C. 403 (j) (b) which provides:

The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified. June 20, 1949, ch. 227, Sec. 8, formerly Sec. 10, 63 Stat. 212, renumbered July 7, 1958, Pub. L. 85-507, Sec. 21 (b) (2), 72 Stat. 337.

Certificate spending by the Federal Bureau of Investigation is provided for in limited circumstances at 28 U.S.C. 537:

Appropriations for the Federal Bureau of Investigation are available for expenses of unforeseen emergencies of a confidential character, when so specified in the appropriation concerned, to be spent under the direction of the Attorney General. The Attorney General shall certify the amount

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spent that he considers advisable not to specify, and his certification is a sufficient voucher for the amount therein expressed to have been spent. Added Pub. L. 89-554, Sec. 4(c), Sept. 6, 1966, 80 Stat. 617.

The National Security Agency (N.S.A.) is protected under Pub. L. 86-36, May 29, 1959, 73 Stat. 63, Section 6:

- (a) Except as provided in subsection (b) of this section, nothing in this Act or any other law including but not limited to, the first section and section 2 of the Act of August 28, 1935 (5 U.S.C. 654) ) shall be construed to require the disclosure of the organization or any function of the National Security Agency, of any information with respect to the activities thereof, or of the names, titles, salaries, or number of the persons employed by such agency.
- (b) The reporting requirements of section 1582 of Title 10, United States Code, shall apply to positions established in the National Security Agency in the manner provided by section 4 of this Act.

42 U.S.C. 2017(b) covers the Atomic Energy Commission:\*

Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

Several other statutory restrictions upon the audit authority of the GAO in non-intelligence-related areas have been enacted by Congress, frequently in the form of certificate spending provisions. <sup>4/</sup>

<sup>4/</sup> See Legislation Relating To The Functions And Jurisdiction Of The General Accounting Office, prepared by the Office of the General Counsel, General Accounting Office. January 1973. Chapter C. "Restrictions on Audit Authority." See Appendix.

\*AEC functions have now been transferred to the Energy Research and Development Administration and the Nuclear Regulatory Commission.



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Regarding the CIA provision the General Counsel's Office of the DIO has stated that "following the enactment of the Central Intelligence Agency Act of 1949, the then Director of the Agency requested that, notwithstanding the very broad and unusual powers granted to the Central Intelligence Agency by the Act, an audit of expenditures at the site, as previously performed by the General Accounting Office, be continued. Accordingly, the General Accounting Office continued to make audits of vouchered expenditures, under the same arrangements that were in effect with the predecessor Central Intelligence Group...However, in view of the provisions of section 8 of the Central Intelligence Agency Act, and the lack of access for any substantive review of agency policies and of its practices and procedures, an audit of voucher expenditures is not now being made." <sup>5/</sup>

In a letter to Senator William Proxmire, dated May 10, 1974, the then Acting Comptroller General explained the sequence of events leading to the present policy:

Subsequent to the enactment of the Central Intelligence legislation, we broadened the type of audit we made of the activities of most Government agencies. We adopted the "comprehensive audit" approach under which we construed an agency's financial responsibilities as including the expenditure of funds and the utilization of property and personnel in furtherance of authorized programs or activities in an efficient, economical, and effective manner. We concluded in 1959 that this broader type of audit was appropriate for our work at the CIA and was more likely to be productive of evaluations which would be helpful to the Congress and the Agency Director. We also determined that the previous

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<sup>5/</sup> Id., at C-3

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limited audit work at CIA should not be continued. In the fall of 1959, we agreed with the then Director of Central Intelligence to broaden our audit efforts at CIA on a trial basis.

In 1961, after the trial period, we concluded that under existing security restrictions on our audit of CIA activities, we did not have sufficient access to make comprehensive reviews on a continuing basis which would produce evaluations helpful to the Congress. We further determined that continuation of the limited financial audit effort which we had conducted in prior years at the CIA would not serve a worthwhile purpose; we therefore proposed to cease all activities at the Agency. At about this same time the Agency was engaged in a major reorganization and strengthening of its comptroller and internal audit functions. Concurrence in our proposal to terminate all audit efforts was forthcoming in 1962, and since that time we have not conducted any reviews at the CIA nor any reviews which focus specifically on CIA activities. o

Little in the way of legislative history is available on the CIA statutes due to the secret nature of the activities of the Agency. Both the National Security Act of 1947 and the Central Intelligence Agency Act of 1949 were considered in executive sessions by the congressional committees concerned. Background material controlled by the Executive Branch is generally classified and therefore not available. But it seems clear that the provisions exempting the CIA from normal government procedures in the expenditure and accounting of funds were intentionally broad. In introducing the Central Intelligence Agency Act of 1949, Representative Sasscer of Maryland stated:

Finally we have provided in this bill some basic appropriations language to which the Government Accounting Office and the budget and fiscal offices of the Agency can look in the expenditure of funds. Much of

o 121 Cong. Rec. S-1773 (1975)

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this language is necessary, for without it the expenditure of funds for the purposes set forth herein cannot be allowed. In addition, we have provided the legal basis for the granting to the Agency authority for the spending of those unvouchered funds which the Appropriations Committee of the House will earmark, and without which there can be no successful operation of an intelligence service. 7

It was pointed out by the Acting Comptroller General in his letter to Senator Proxmire that over 200 bills have been introduced in the last two decades which sought to make the CIA more accountable to the Congress. The failure of those proposals is seen by some as evidence that Congress did indeed intend to grant the CIA extraordinary authority in the conduct of its intelligence mission. In United States v. Richardson, 418 U.S. 166 (1974) the Supreme Court found that there was no standing in a suit to compel the Government to give information on how the CIA spends its funds (status as a taxpayer had been asserted as providing standing), but in so holding acknowledged that the CIA is not the only agency protected by a statute such as 50 U.S.C. 403 (j)(b), which: "provides different accounting and reporting requirements and procedures for the CIA, as is also done with respect to other governmental agencies dealing in confidential areas." (at 175)

The experience of the GAO with regard to N.S.A. has been somewhat different from that with the CIA. Limited audits have been conducted of that Agency, but those limits are strict. The GAO conducts three types of audits: 1) Audits of financial operations and legal compliance; 2) audits of efficiency and economy of operations; and 3) audits of program results. These have been described by the GAO in the following manner:

7/ 95 Cong. Rec. 1945 (1949)

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- 1) An audit of financial operations and legal compliance ...is an audit of financial transactions, accounts, and reports and of compliance with applicable laws and regulations. The audit includes enough work to determine whether:

- The agency controls and accounts effectively for its funds, property, and other assets; its liabilities; and its revenues and expenditures.
- The agency keeps adequate accounting records according to the principles, standards, and related requirements prescribed by the Comptroller General.
- The agency's financial reports show fully and fairly its financial condition and the results of its operations and provide adequate financial information for use by managers.
- The agency's accounting system provides:
  1. A basis for settling accountable officer's accounts.
  2. Reliable information for use in preparing budget requests, controlling the budget, and furnishing financial information to the Office of Management and Budget.
  3. Information required for the Government's central system in the Treasury Department.
- The agency is complying with the laws and regulations governing the receipt, disbursement, and application of public funds.

- 2) Audits concerned with efficiency and economy in the use of public resources: Policies, procedures, and transactions are examined 1) to evaluate the efficiency, economy, and legality with which an agency carries out its programs and activities and uses financial, property, and personnel resources and 2) to develop recommendations for improvements.

Specifically, these audits inquire into such matters as the:

- Need for goods or services provided or procured.
- Reasonableness of costs incurred or expenditures made.
- Adequacy of safeguards over and care of resources acquired.
- Proper Utilization of resources.
- Adequacy of revenues received for goods or services sold.

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3) Audits of program results would be concerned with inquiring into whether desired results or benefits are being achieved and whether the objectives established by the Congress are being met. The scope of an audit of program results often considers such additional factors as whether:

- Management weaknesses adversely affect the achievement of desired results.
- Alternative approaches might achieve program objectives more effectively or at a lower cost.
- Benefits or detriments are resulting that were not contemplated when the program was established.
- The Congress should reconsider the program objectives in the light of experience.

In the case of the National Security Agency only the first type of audit has regularly been conducted by the GAO. On site audits of vouchers and accounts have been performed by permanently assigned GAO staff members since 1955. Those directly involved were required to obtain special security clearances in order to conduct their audits. The Acting Comptroller in his letter to Senator Proxmire pointed to four problems which are presented by the requirement of security clearances: 1) the clearance is expensive, 2) requires at least 6 or more months to complete, 3) for certain operations higher level clearances might be necessary, and 4) the results of the work performed would be highly classified and severely limited in distribution.<sup>9/</sup> He went on to state that GAO has been "advised that the required clearance for work at N.S.A. will generally be acceptable for performing similar work at other organizations (other than the CIA) within the intelligence community."<sup>10/</sup>

<sup>8/</sup> The General Accounting Office, Answers to Frequently Asked Questions, United States Government Printing Office: 1973. Nos. 16, 17, 18, 19.

<sup>9/</sup> 121 Cong. Rec. S-1774 (1975)

<sup>10/</sup> Id.

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But the clearance matter is still the stumbling block, and the CIA is apparently more reluctant to grant such clearances than other agencies. The nature of a clearance itself poses additional difficulties:

The problem of obtaining proper security clearances is a major obstacle to our work. Hence, for example, while many of our staff have clearances for 'Top Secret' defense data and 'Atomic Energy Restricted' data, these are not considered sufficient for access to all intelligence data. In each case the "need to know" test is applied and the deeper we have tried to delve into the working of the intelligence community, the more difficult the test becomes. We have been told that within the Defense intelligence community there would be over 100 separate clearances involved if one person were to gain access to the entire community. <sup>11/</sup>

The conclusion reached by GAO is that "a strong endorsement by the congressional oversight committees will be necessary to open the doors to intelligence data wide enough to enable us to perform any really meaningful reviews of intelligence activities." <sup>12/</sup>

Criticism of the CIA in this area has not been infrequent:

Since GAO provides the mechanism through which Congress normally audits the executive agencies whose budgets it authorizes, the failure of the CIA to cooperate with GAO auditors and investigators presents an extremely serious problem. The intelligence subcommittee staffs do not have the capacity to audit a billion-dollar budget such as the CIA's, while GAO was established precisely to perform such audits for Congress. Thus, by not cooperating with GAO, the CIA effectively forecloses Congress from auditing its books. <sup>13/</sup>

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<sup>11/</sup> Id.

<sup>12/</sup> Id.

<sup>13/</sup> 7 New York University Journal of International Law and Politics 493, 519. (Winter: 1974).

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Representative Bob Eckhardt of Texas has introduced legislation aimed at curbing the discretion inherent in certificate spending procedures. H.R. 1523, 94th Cong., 1st Sess. (1975) would add to the Budget and Accounting Act of 1921 the following paragraph:

- (b) Notwithstanding any provision of law heretofore enacted permitting an expenditure to be accounted for solely on the approval, authorization, or certificate of the President of the United States or the head of a department or establishment, the Comptroller General shall be furnished such information relating to such expenditure as he may request and access to all necessary books, documents, papers, and records, relating to such expenditure in order that he may determine whether the expenditure was, in fact, actually made and whether such expenditure was authorized by law. The provisions of this paragraph shall not be superseded except by a provision of law enacted after the date of enactment of this paragraph and specifically repealing or modifying the provisions of this paragraph.

To the extent that this bill aims at curbing activities of the intelligence community, it should be remembered that prior to this Congress measures designed to in any way "watchdog" the intelligence organizations beyond present safeguards have met with little success. In 1956 Senator Mike Mansfield of Montana introduced S. Cong. Res. 2, 84th Cong., 2d Sess, which sought to establish a Joint Committee on Central Intelligence. This effort to establish a committee to make continued studies of the activities of the CIA which that agency would have to keep fully and currently informed, was voted down 27-59 after lengthy debate. And in 1966 an effort to create a Senate Committee on Intelligence Operations also was defeated. Such efforts have led the CAO to conclude that "although the question of whether the Congress exercises adequate oversight concerning the intelligence community has been raised a number of times, the determination made in 1949 that Congressional oversight would be limited to reviews by the relatively few members who

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serve on certain designated committees or subcommittee remains unchanged." <sup>14/</sup>  
Until Congress takes positive measures to indicate that the Comptroller General is obligated to go further in auditing and reporting on the activities of intelligence agencies it is both unlikely that he will attempt to do so, or that the agencies themselves will feel any greater obligation to provide data requested.

14/ 121 Cong. Rec. S-1773 (1975)



Kent M. Ronhovde  
Legislative Attorney  
American Law Division  
September 16, 1975



from the Central Intelligence Agency Act of 1949

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maintenance of buildings, utilities, facilities, and appurtenances;  
and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

#### SEPARABILITY OF PROVISIONS

SEC. 11. If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

#### SHORT TITLE

SEC. 12. This Act may be cited as the "Central Intelligence Agency Act of 1949".

Approved June 20, 1949.

order, and of the payment of money or disposal of stores in conformity with it; and the commanding officer by whose order such disbursement or disposal was made, shall be held accountable for the same. (R. S. § 285; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

## DERIVATION

Res. Mar. 3, 1849, No. 17, § 2, 9 Stat. 419.

## CODIFICATION

A reference in the original text of this section to the "proper accounting officers of the Treasury" was changed to refer to the "General Accounting Office," on authority of act June 10, 1921.

## TRANSFER OF FUNCTIONS

Function of disbursement of public money transferred from all other agencies to the Fiscal Service, see note under section 103a of this title.

## § 107. Settlement of expenses of intercourse with foreign nations.

Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (R. S. § 291; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

## DERIVATION

Act Feb. 9, 1793, ch. 4, § 2, 1 Stat. 300.

## CODIFICATION

A reference in the original text of this section to the "proper accounting officers of the Treasury" was changed to refer to the "General Accounting Office" on authority of act June 10, 1921.

An appropriation for the fiscal year 1927 to enable the President to meet unforeseen emergencies arising in the Diplomatic and Consular service, etc., to be expended pursuant to the requirement of this section, was contained in act April 29, 1926, ch. 195, 44 Stat. 335. Similar appropriations were contained in prior acts.

## CROSS REFERENCES

Comptroller General not entitled to information regarding expenditures made under this section, see section 54 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 54 of this title; title 22 section 2671.

## § 107a. Same; delegation of authority by Secretary of State.

## CODIFICATION

Section, acts July 9, 1947, ch. 211, title I, § 101, 61 Stat. 282; June 3, 1948, ch. 400, title I, § 101, 62 Stat. 308; July 20, 1949, ch. 354, title I, § 101, 63 Stat. 449; Sept. 6, 1950, ch. 696, title I, § 101, 64 Stat. 610; Oct. 22, 1951, ch. 533, title I, § 101, 65 Stat. 577; July 10, 1952, ch. 651, title I, § 101, 66 Stat. 550; Aug. 5, 1953, ch. 328, title I, § 101, 67 Stat. 368; July 2, 1954, ch. 456, title I, § 101, 68 Stat. 414; July 7, 1955, ch. 279, title I, § 101, 69 Stat. 265; June 20, 1956, ch. 414, title I, § 101, 70 Stat. 300, was from annual Department of State Appropriation Acts. Similar provisions were made permanent, and are now covered by section 2671 of Title 22, Foreign Relations and Intercourse.

§ 108. Accounting by Navy Department for appropriations for obtaining information from abroad and at home.

Expenditures by the Department of the Navy from the appropriation for obtaining information from abroad and at home shall be accounted for specifically, if, in the judgment of the Secretary of the Navy, they may be made public, and he shall make a certificate of the amount of such expenditures as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Aug. 29, 1916, ch. 417, 39 Stat. 557.)

## CODIFICATION

Section was a provision of the Naval Service Appropriation Act for the fiscal year 1917.

## § 109. Repealed. Aug. 17, 1950, ch. 735, § 10 (a) (2), 64 Stat. 462.

Section, R. S. § 292, related to collection of debts due Post Office Department. See section 2601 et seq. of Title 39, Postal Service.

## EFFECTIVE DATE OF REPEAL

Repeal effective on the nineteenth day following Aug. 17, 1950.

## § 110. Suits on postmasters' bonds.

All fees for United States attorneys, marshals, clerks of courts and special counsel necessarily employed in prosecuting civil suits instituted by the General Accounting Office through the Attorney General against the sureties on the official bonds of late postmasters, as provided for by section 109 of this title, shall be paid from the appropriations for expenses of the United States courts. (Feb. 26, 1896, ch. 33, 29 Stat. 25; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24; Ex. Ord. No. 6166, § 5, June 10, 1933.)

## REFERENCES IN TEXT

Section 109 of this title, referred to in the text, was repealed by act Aug. 17, 1950, ch. 735, § 10 (a) (2), 64 Stat. 462.

## CODIFICATION

Section was a provision of the Urgent Deficiency Act for the fiscal year 1896.

A reference in the original text to the "Auditor for the Post Office Department" was changed to refer to the "General Accounting Office" on authority of act June 10, 1921.

## TRANSFER OF FUNCTIONS

Transfer to Department of Justice of function of prosecuting in the courts claims and demands by the Government of the United States, see Ex. Ord. No. 6166, § 5, set out under section 901 of Title 5, Government Organization and Employees.

## CHANGE OF NAME

"Solicitor of the Treasury" was originally changed to read "General Counsel for the Department of the Treasury" and has now been changed to read "Attorney General".

## §§ 111 to 114. Repealed. Aug. 17, 1950, ch. 735 § 10 (a) (2)—(4), 64 Stat. 462.

Sections 111 and 112, R. S. §§ 293, 294, related to accounts of money-order business and expenses of postmasters.

Section 113, act Mar. 3, 1875, ch. 128, § 4, 18 Stat. 343, related to accounts of expenditures of Post Office Department under appropriations.

Section 114, act July 12, 1876, ch. 179, § 4, 19 Stat. 80, related to reports of financial condition of Post Office Department.

For present provisions relating to funds and accounting of the Postal Service, see section 2001 of Title 39, Postal Service.



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179296

May 10, 1974

The Honorable William Proxmire  
United States Senate

Dear Senator Proxmire:

In a letter dated January 24, 1974, you requested our assistance in reviewing the extent of Congressional oversight and control over the operations of the United States intelligence community. You consider the following agencies as part of the intelligence community: the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the intelligence components of the Army, Navy and Air Force; the Federal Bureau of Investigation; the Department of the Treasury; the Atomic Energy Commission; and the Bureau of Intelligence and Research of the Department of State.

Under the Constitution of the United States the Congress is empowered to raise and support armies, provide and maintain a Navy and make rules for the Government and regulation of the Armed Forces. Art. I, Sec. 8, Cls. 12, 13 and 14. Clause 18 of Article I, Sec. 8 of the Constitution empowers the Congress "[T]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States and in any Department or Officer thereof."

Pursuant to its constitutional authority, the Congress has enacted numerous statutes dealing with national security. We will concentrate herein on the two statutes cited in your letter.

On July 26, 1947, there was signed into law the National Security Act of 1947, Pub. L. 80-253, 61 Stat. 495, as amended, 50 U.S.C. 401, et seq. Generally that act established a federated agency, the National Military Establishment, to coordinate the three separate executive departments of the Army, Navy and Air Force, each to be headed by a civilian secretary. Outside the National Military Establishment, but somewhat closely related to it, three other agencies were created by the act: the National Security Council, the Central Intelligence Agency, and the National Security Resources Board.

The National Security Council (Council) was established to advise the President with respect to the integration of domestic

foreign and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security. As such it is generally the President's chief policy advisor in national security matters. It also assists the President in implementing that policy. As established by that statute, the Council consisted of the President, the Secretary of State, the Secretary of Defense, the secretaries of the three services, the Chairman of the National Security Resources Board, and certain enumerated persons when appointed by the President by and with the advice and consent of the Senate to serve at the President's pleasure. The composition of the Council has since been altered slightly.

Established under the Council is the Central Intelligence Agency (CIA). The purpose of this agency is largely to coordinate, under the direction of the Council, the intelligence activities of the several Government departments and agencies in the interest of national security. In addition to its coordination functions the CIA performs such other functions and duties related to intelligence affecting the national security as the Council may from time to time direct.

The National Security Resources Board, which was abolished by statute in 1954 (act of September 3, 1954, 68 Stat. 1226, 1244), was composed of a Chairman and such heads or representatives of the various executive departments and independent agencies as may be designated from time to time by the President. Its purpose was to advise the President relative to the coordination of military industrial and civilian mobility and certain other matters.

On June 20, 1949, the Congress enacted Public Law 81-110, which is known as the Central Intelligence Agency Act of 1949, 63 Stat. 20 as amended, 50 U.S.C. 403a-403j. The purpose of this legislation generally is to grant to the CIA the necessary authority for its proper and efficient administration. Previously the CIA had been operating under the 1947 Act which did not grant the CIA "the authorities necessary for its proper administration." As a result of questions raised by this Office and other agencies as to the legality of some of the CIA's activities, Congress decided to spell out the manner in which the agency would be administered. Public Law 81-110 deals with, among other things, procurement authority, travel and allowances for CIA personnel, methods of expenditures of appropriated funds, and other related authorities connected with the agency's administration. Other provisions enable the agency to protect its confidential functions. In passing this act the Congress recognized that some of its provisions were of an unusual nature but determined that they were nonetheless necessary to the successful operation of an efficient intelligence service.

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Your inquiry first requests us to review the oversight authority of Congress in relation to the aforementioned acts and the intelligence community as a whole. Through the exercise of the "power of the purse" given to it by the Constitution, the Congress, in our view, is entitled to any information on the expenditure of funds which it wishes to receive from the executive branch of the Government. When denied desired data the Congress may deny funds to the agency involved until such information is forthcoming. Within the limits of this ultimate power the Congress may establish the rules with respect to its access to information and materials held by the executive branch.

In enacting the above-cited statutes the Congress did not specifically address itself to the question of the kind and amount of oversight and control which it would exercise over the intelligence community, other than giving the community, under the direction of the CIA, authority to keep its operations from becoming public.

However, the attitude of the Congress with respect to its oversight functions, at that time, can be seen in its consideration of the Central Intelligence Agency Act of 1949 (CIA Act). In hearings held by the House Committee on Armed Services on February 23, 1949, on H.R. 1741, H.R. 2546, and H.R. 2663, the Chairman stated:

"Now, of course, we all recognize the purpose of this bill. Of course, there is a great deal of matter that we cannot discuss here, and we cannot discuss on the floor of the House. We will just have to tell the House they will have to accept our judgment and we cannot answer a great many questions that might be asked. We cannot have a Central Intelligence Agency if you are going to advertise it and all of its operations from the tower [of the Empire State Building]." pp. 486-487.

In its report of February 24, 1949, to the House on H.R. 2663, the Committee set forth an explanation of certain sections of the bill. It concluded, however, that:

"The report does not contain a full and detailed explanation of all of the provisions of the proposed legislation in view of the fact that much of such information is of a highly confidential nature. However, the Committee on Armed Services received a

complete explanation of all features of the proposed measure. The committee is satisfied that all sections of the proposed legislation are fully justified." House Rept. 31-160, p. 6.

The House considered the Committee report on March 7, 1949. (See Cong. Rec. (daily ed.) pp. 1982-1990.) Objection was raised at that time to the failure of the Committee to inform the House as to the full implications of the bill under consideration. For example, Mr. Celler stated in pertinent part:

"Mr. Speaker, although I do not like the hush-hush business surrounding this bill, I shall not oppose it. Certainly if the members of the Armed Forces Committee can hear the detailed information to support this bill, why cannot our entire membership? Are they the Brahmins and we the untouchables? Secrecy is the answer. What is secret about the membership of an entire committee hearing the lurid reasons? In Washington three men can keep a secret if two men die. It is like the old lady who said, 'I can keep a secret but the people I tell it to cannot.'" p. 1985.

The Senate on May 27, 1949, amended and passed the bill (H.R. 2663) as passed by the House. The Senate debate (Cong. Rec. (temp. ed.) pp. 7082-7090) reflects the knowledge of that body that it was not being given a full explanation of all of the provisions of the bill. Despite this lack of knowledge on the part of both Houses of Congress, the conference report was agreed to and the bill passed both Houses and was signed by the President.

Inasmuch as the Congress as a whole was not given a detailed explanation of the provisions of the CIA Act of 1949 or of the underlying information which prompted the legislation, it seems that the Congress expected its oversight over the CIA to be handled by the appropriate committees in secrecy consistent with the manner in which the bills which were enacted into this legislation were handled.

Since that time, however, there has been extensive and increasing concern on the part of various members of the Congress with the level of oversight and independent surveillance over the intelligence community. The question of whether the Congress

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was giving sufficiently serious consideration to the constitutional provision that no money may be spent from the public treasury without congressional approval was the subject of a major Senate debate in 1956. The debate was triggered in part by the 1955 Hoover Commission Study which expressed concern about the absence of congressional and other outside surveillance of Government intelligence activities.

Senator Mansfield introduced a bill--with 34 cosponsors--for a joint committee on intelligence. The Senate Rules Committee majority concluded that while secrecy is essential for certain intelligence community operations, a wide area of intelligence activities constituted proper grounds for congressional review; and reported the bill favorably out of the committee.

A strong administration opposition to the bill caused 14 of the original cosponsors of the bill to reverse their positions and the bill was defeated by a vote of 59 to 27, with 10 Senators not voting.

In 1960 two events resulted in congressional attention being given to the subject issue.

Shortly after the U-2 incident the Senate considered, but did not pass, a proposal for a major reorganization of the policy-making machinery of the executive branch, which provided for, among other things, the transfer from the CIA of all non-clandestine intelligence collection, and the establishment of a joint committee of the Congress on the CIA.

The House, shortly thereafter considered a resolution--triggered by the suspected defection of two NSA employees--to authorize the House Committee on Un-American Activities to conduct a full and complete study of each of the intelligence agencies. The House adjourned without passing the resolution. However, the Chairman of the Armed Services Committee did name a three man subcommittee to conduct, without publicity, a complete investigation of the intelligence agencies.

In 1966 the subject issue was again debated in the Senate. Consideration of more systematic congressional surveillance of intelligence activities was focused by a proposed Senate resolution calling for an investigation by the Senate Foreign Relations Committee of American foreign intelligence activities. The proposal was referred to the Foreign Relations Committee,

where it was approved by a vote of 14 to 5. After considerable debate the Senate voted--61 to 28--to send the resolution to the Armed Services Committee but no action was taken on the bill. However, the Chairman of the Armed Services Committee did invite selected members of the Foreign Relations Committee to attend all intelligence subcommittee sessions.

In the past two decades, more than 200 bills aimed at making the CIA more accountable to the Congress have been introduced.

Thus, although the question of whether the Congress exercises adequate oversight concerning the intelligence community has been raised a number of times, the determination made in 1949 that Congressional oversight would be limited to reviews by the relatively few members who serve on certain designated committees or subcommittees remains unchanged.

You also requested that we provide you with an opinion as to the legality of the Council's issuing classified directives to the intelligence community based on the CIA Act of 1949 and the National Security Act of 1947, if the directives deal with subjects, such as instructions to engage in covert activities not considered in the original legislation. You also ask whether the terms of subsections 102 (d)(4) and (5) of the National Security Act; 50 U.S.C. 403(d) represent "a totally open ended provision" and whether the Council must make all directives issued pursuant to those subsections available to the Congress.

The relevant portions of section 102(d) provide:

"(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency [CIA], under the direction of the National Security Council--

\* \* \* \* \*

"(4) to perform, for the benefit of the existing intelligence agencies such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;



"(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

As noted above, the Council is the President's chief advisor on national security policy and it also is responsible for assisting in implementing that policy. The Council acts generally through the issuance of instructions or directives to the agencies within the intelligence community. Inasmuch as the Council is endowed with broad authority in this area, it may issue directives dealing with virtually any subject dealing with national security and United States intelligence operations. While the statute does not explicitly mention "covert operations and activities," it seems clear that those operations and activities are part of the national security intelligence operations which are within the Council's jurisdiction. Of course, the Council may not direct an agency to perform duties proscribed by statute. Thus, for example, the CIA may not undertake internal security functions. See subsection 102(d)(3) of the NSA Act of 1947 (50 U.S.C. 403(d)(3)). Copies of the Council's directives apparently would be available to the Congress in accordance with the discussion above of congressional oversight of intelligence operations.

Finally, you have asked for a review of GAO's right to review, audit or otherwise examine the programs and operations of the various intelligence agencies. Also, you request information on the success we have had in obtaining information from and about the intelligence community, the staff support we could provide to the oversight committees and the problems which might attend congressional requests for investigations in the intelligence field.

The basic audit authority of this Office is contained in the Budget and Accounting Act, 1921, and the Accounting and Auditing Act of 1950. Pursuant to these and other statutory authorities the audit authority of the General Accounting Office extends generally to the expenditures of the various departments and establishments. There are, however, exceptions provided by law, including a fairly substantial number of instances where expenditures are accounted for solely upon a certification by the head of the department or establishment involved. For example, expenditures of a confidential, extraordinary or emergency nature by the CIA are to be accounted for

solely on the certificate of the Director of Central Intelligence. 50 U.S.C. 403j(b). Sometimes such restrictions are contained in appropriation acts. For example, annual appropriations for the Federal Bureau of Investigation have included funds to meet unforeseen emergencies of a confidential character to be expended under the direction of the Attorney General and accounted for solely on his certificate.

Overall we have had relatively limited contact with the intelligence community. However, we have had sufficient contact to enable us to identify certain problems we would have in obtaining information from and about intelligence organizations. Underlying these problems is the extremely high degree of sensitivity attached to intelligence matters and the desirability within the intelligence community of reducing the risk of leakage by minimizing the number of people having access to such matters. Part of this latter factor, which also entails a relatively considerable expenditure of time and money in obtaining necessary security clearances, is that the intelligence community restricts the numbers of clearances it will issue to us. Generally to carry out a survey or review in a timely manner, develop a report and process it through Office review channels requires effort on the part of a relatively large number of people. Our experience indicates, however, that we will be issued only a few clearances on a given intelligence subject--not nearly enough to allow us to do the type of job we normally expect to do. Of course, we try to streamline our procedures as much as possible in handling these matters. Another problem is working out arrangements acceptable to all parties for distributing any of our final products to the Congress.

Following enactment of the Central Intelligence Agency Act of 1949, the then Director of the Agency requested that notwithstanding the very broad and unusual powers granted to the CIA by the Act, an audit of expenditures at the site, as previously performed by GAO, be continued. Accordingly, our Office continued to make audits of vouchered expenditures under the same arrangements that were in effect with the predecessor Central Intelligence Group. However, in view of the provisions of section 8 of the Act (formerly section 10), no exceptions were taken to any expenditures; in those cases where questionable payments came to our attention, we referred the matter to the CIA Comptroller's Office for corrective action. In using the term "questionable payments," we meant any expenditures

which, except for former section 10(a) of the Act, appeared to be improper or illegal either under law or under the decisions of the Comptroller General. In our audit work, we did not make substantive reviews of Agency policies, nor of its practices and procedures; further, we made no audit of expenditures of unvouchered funds.

Subsequent to enactment of Central Intelligence legislation, we broadened the type of audit we made of the activities of most Government agencies. We adopted the "comprehensive audit" approach under which we construed an agency's financial responsibilities as including the expenditure of funds and the utilization of property and personnel in the furtherance of authorized programs or activities in an efficient, economical and effective manner. We concluded in 1959 that this broader type of audit was appropriate for our work at the CIA and was more likely to be productive of evaluations which would be helpful to the Congress and the Agency Director. We also determined that the previous limited audit work at CIA should not be continued. In the fall of 1959, we agreed with the then Director of Central Intelligence to broaden our audit efforts at CIA, on a trial basis.

In 1961, after the trial period, we concluded that under existing security restrictions on our audit of CIA activities, we did not have sufficient access to make comprehensive reviews on a continuing basis which would produce evaluations helpful to the Congress. We further determined that continuation of the limited financial audit effort which we had conducted in prior years at the CIA would not serve a worthwhile purpose; we therefore proposed to cease all activities at the Agency. At about this same time the Agency was engaged in a major reorganization and strengthening of its comptroller and internal audit functions. Concurrence in our proposal to terminate all audit efforts was forthcoming in 1962, and since that time we have not conducted any reviews at the CIA nor any reviews which focus specifically on CIA activities.

At this point, it might be useful to relate some of the activities and problems we have had in relation to the intelligence community.

One of our divisions, the Procurement and Systems Acquisition Division (PSAD), has attempted to engage in several reviews in the intelligence area. For example, in June 1973, it planned to make a survey at a Department of Defense field installation

but access was blocked because of the sensitive nature of work being performed there. Instead, DOD suggested that the Division Director first obtain a special clearance, get a briefing on the installation, and then decide what GAO's course of action should be. He immediately requested clearance for himself and an Assistant Director. Even though both had Top Secret and AEC "Q" clearances, a new "full field" investigation was required for the special clearance involved. They have not yet received the clearances, and consequently have obtained no information about the installation other than its name.

In another instance, this division had one of our regional offices make a survey at a DOD field installation having responsibility for analyzing data contained in foreign country technical publications. The survey proceeded well until our requests for information apparently reached the sensitive stage. A meeting was then held with a high intelligence official in Washington at which time the conditions under which we could continue our work were outlined. The official seemed to be very cooperative and offered to accelerate the special clearance procedure so long as no more than 3 or 4 staff members were to be cleared and assigned to intelligence work for several years. It appeared to us that we would not have full control over the direction of our effort. Because of this and other factors we decided to terminate the survey.

On another assignment, initiated at the request of a Senate Armed Services subcommittee, we attempted to compare the Soviet and U.S. expenditures for military research and development. We had good cooperation from DOD, including access to some intelligence reports, due at least partially to the existence of a congressional request. But even so, we were not able to see all the intelligence reports used by DOD in making its own comparison. The intelligence community refused to provide us with the reports or to work with us directly.

Our International Division has the most contact with and concerning the intelligence community. The International Division has had contact with the Central Intelligence Agency directly or indirectly in connection with broad reviews regarding such matters as international narcotics control, military activities in Laos, contracting for technical services, language training, transfers of excess defense articles to foreign governments, U.S. economic assistance programs, and

the wheat sale to the Soviet Union. In some cases the Division has experienced cooperation from the CIA in obtaining information it desired; in other cases attempts to get information were frustrated. The Division's overall success in obtaining information from the intelligence community must be characterized as border line, at best.

Finally, we might discuss the work of our Logistics and Communications Division with respect to the National Security Agency (NSA). The NSA is a separately organized agency within the Department of Defense and, for financial administrative convenience, is under the direction of the Secretary of Defense. It is a unified organization providing for the collecting and presenting of intelligence information on a worldwide basis through verbal or message type media and interception and analysis of wave or signal type communications. NSA is also responsible for insuring secure communications systems for all departments and agencies of the Government. The Congress has enacted several statutes to safeguard the agency's cryptologic activities and to enable the Government to limit disclosure of its cryptologic activities to such information as does not interfere with the accomplishment of cryptologic missions.

In response to a request by the Director of NSA an arrangement was approved by the Comptroller General on July 18, 1955, whereby a GAO staff member would be assigned to the NSA on a permanent basis to perform on-site audits of its vouchers and accounts. The designated staff member or GAO representative and the responsible Director having general supervision for this work were required to obtain the necessary special security clearance to conduct reviews, surveys, or other similar efforts.

From 1955 through 1973 only two or three GAO personnel had this special clearance at any one time. During this period the audit effort by GAO has been primarily the compliance type, that is, examining the financial accounting records and related documents together with limited effort in the procurement and contracting areas.

Under present on-site audit procedures all vouchers, contracts, schedules, accounts current or statements of transactions, and other supporting documents are kept at NSA or designated records storage sites for audit purposes. This is primarily for security reasons because the majority of the documentation is of classified nature and not for ready publication.

The ready accessibility of the GAO representative(s) to NSA officials provides for frequent discussions and ready "on the spot" resolution of questionable entitlement claims provides for early detection of over or under payments thereby enabling NSA to take appropriate action. Generally, these matters and other queries relating to the functions of NSA are handled between GAO representative(s) and cognizant NSA officials on an informal basis primarily because of agency controls and provisions of law to safeguard the sensitive activities of the NSA.

The provisions of Public Law 36-36, approved May 1959 enables NSA to function without disclosure of information which would endanger the accomplishments of its missions. Section 6 thereof provides that no law shall be construed to require the disclosure by the organization or any function of the NSA of any information with respect to the activities thereof. We believe that this section should not be construed as prohibiting GAO access on a confidential basis but only as prohibiting disclosure of its findings to the public at large. Consequently, no formal report disclosing the results of our continuing examinations of the agency activities has been published. To date, informal discussions with officials outside of NSA have been held with only those GAO personnel, at the director level or higher, having the proper clearance and the need-to-know concerning the various sensitive activities of this agency.

Discussions were held in latter 1973 and early 1974 with top-level NSA officials about GAO expanding its examinations by performing management-type reviews of the significant aspects of the agency's operations as well as the compliance type financial audits and certain assist work for other GAO divisions that we have been engaged in up to the present. Although it was concluded that the expansion was feasible, performance of reviews in some functions would be limited from a practical viewpoint, based upon applicable laws, regulations, and controls governing the cryptologic functions of NSA.

Furthermore, it was very evident that any work involving NSA operations would require, without exception, the special clearance for each GAO staff member assigned responsibility for this type of work. This can be a problem because (1) the clearance is expensive, (2) requires at least 6 or more months to complete, (3) for certain operations higher level clearances

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might be necessary, and (4) the results of the work performed would be highly classified and severely limited in distribution.

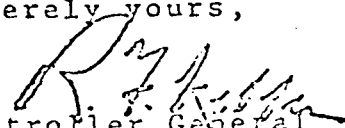
Since discussions in latter 1973, arrangements have been made with NSA to have eight additional staff members obtain the necessary clearances. This will provide ten staff members with this type clearance. To date seven have been cleared. We have been advised that the required clearance for work at NSA will generally be acceptable for performing similar work at other organizations (other than the CIA) within the intelligence community. We plan for fiscal year 1975 preliminary review efforts of NSA's automatic data processing functions.

As indicated by the foregoing, we have had some serious difficulties in obtaining information from and about the intelligence community. Sometimes the community has cooperated to the extent of providing us with the requested information but we have been unable to verify it independently. The problem of obtaining proper security clearances is a major obstacle to our work. Hence, for example, while many of our staff have clearances for "Top Secret" defense data and "Atomic Energy Restricted" data, these are not considered sufficient for access to all intelligence data. In each case the "need-to-know" test is applied and the deeper we have tried to delve into the workings of the intelligence community, the more difficult the test becomes. We have been told that within the Defense intelligence community there would be over 100 separate clearances involved if one person was to gain access to the entire community. The time it takes to obtain clearances varies but it is at best, a slow process. Also, as indicated, there is a question as to whether we could get enough staff members cleared to do a thorough job on a timely basis.

From prior experience, it is our view that a strong endorsement by the congressional oversight committees will be necessary to open the doors to intelligence data wide enough to enable us to perform any really meaningful reviews of intelligence activities.

We trust the above has been responsive to your inquiry.

Sincerely yours,

  
Acting Comptroller General  
of the United States

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

. 16 June 1975

Honorable Elmer B. Staats  
Comptroller General of the United States  
General Accounting Office  
441 G Street  
Washington, D. C. 20548

Dear Mr. Staats:

My attention has been directed to a letter from Mr. Keller, General Accounting Office, to the Honorable William Proxmire dated May 10, 1974, which was placed in the Congressional Record by Senator Proxmire on February 11, 1975. The letter deals with the intelligence community and reviews the General Accounting Office's right to audit and obtain information from the Central Intelligence Agency.

Inasmuch as Mr. Keller has treated a subject basic to this Agency's capability to carry out work mandated by Congress, I believe it would serve a useful purpose to review some of the background concerning the use of confidential funds and their relationship to the audit of CIA over the years.

Mr. Keller notes in his letter that there are "a fairly substantial number of instances where expenditures are accounted for solely upon a certification by the head of the department or establishment involved." The need is clear in the case of this Agency. The necessity to safeguard certain truly vital foreign intelligence secrets has been recognized by the Congress in its direction to the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. This responsibility was complemented by authorizing certain expenditures "for objects of a confidential, extraordinary, or emergency nature," to be accounted for solely on the certificate of the Director of Central Intelligence. Such expenditures would apply, for example, to a secret agent operating abroad in a hostile climate whose identity must be protected not only so that he can continue supplying the intelligence involved, but also because his freedom--and on occasion his life--weighs in the balance.

Other intelligence activities do not have such obvious security requirements, but are, nonetheless, within the sources and methods concept. Liaison with foreign intelligence and security agencies is extremely important in fields of both positive intelligence and counterintelligence. Such liaisons to be effective depend on the confidence of each service that the other will protect not only the mere fact of the relationships, but also its sources and methods and sensitive information. Compromise of any of these brings not only protests from the foreign liaison service, but in some cases a lessening or even cessation of its cooperation.



Even overt activities have their own security problems. Thus, many U. S. citizens and others are willing to provide sensitive information to overt intelligence units only on condition that their cooperation in this respect be absolutely protected.

This need for the special protection of intelligence sources and methods has been well recognized by officials in the executive, judicial, and legislative branches of our Government. Mr. Lindsay C. Warren, then Comptroller General of the United States, in a letter dated March 12, 1948, to the Director, Bureau of the Budget, addressed the provision granting the Director of Central Intelligence the power to certify the expenditure of confidential funds by stating that while it provided "for the granting of much wider authority than I would ordinarily recommend for Government agencies, generally, the purposes sought to be obtained in the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein." He went on to say that the "necessity for secrecy in such matters is apparent and the Congress apparently recognized this fully in that it provided in section 102(d)(3) of Public Law 253, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." Under these conditions, he stated, "I do not feel called upon to object to the proposals advanced ... "

It has been and it remains the policy of CIA to rely upon vouchered funds wherever possible. (Vouchered funds are those which can be accounted for and audited in conformance with the laws that apply to other Government agencies and with standard Government regulations and procedures.) Currently more than half of the Agency's appropriations are disbursed as vouchered funds. The confidential funds certification authority referred to by Mr. Warren in his March 12, 1948 letter is reserved for "objects of a confidential, extraordinary, or emergency nature."

From the beginning of CIA records for all vouchered fund expenditures were made available to and were subject to a voucher audit by the GAO. Use of the voucher audit procedure allowed the GAO to examine expenditure and collection vouchers and related documents to determine whether expenditures were made legally and solely for the objects for which appropriations were made. Use of the voucher audit procedure also allowed CIA to protect those activities of a confidential, extraordinary, or emergency nature, i.e., intelligence sources and methods.

Subsequent to the enactment of the CIA legislation, GAO adopted a "comprehensive audit approach," and raised with the CIA Subcommittee of the House Armed Services Committee the desirability of an expanded audit of Agency activities. The Comptroller General stated by letter dated May 29, 1959 to Subcommittee Chairman Kilday that he did "not recommend any change in section 10 (now section 8) of the Central Intelligence Act" and that "any broadening of our audit activities should not include an evaluation of the intelligence activities of the Agency."

Mr. Allen Dulles, then Director of Central Intelligence, agreed that GAO should expand its current audit activities in a letter to the Comptroller dated October 16, 1959, cautioning, however, that the comprehensive audit would have to be limited so as to remain outside the area of sensitive security operations for which by law the Director's certificate must be deemed a sufficient voucher.

The results of the trial period of comprehensive audit from 1959 to 1961 were made known to the CIA Subcommittee in a letter of May 16, 1961 from the Comptroller General in which he said the GAO planned to discontinue the audit of CIA activities. He acknowledged that various steps were taken by the CIA "to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA." Nevertheless, he stated that GAO "cannot effectively review and evaluate activities of the Support Component because the confidential and overt activities of this component are integrated to such an extent that we cannot make reasonably comprehensive audits." He further stated "we have been given sufficient access to make reasonably comprehensive reviews of the overt activities of the Intelligence Component, but such reviews, in our opinion, will not be productive of significant evaluations because we cannot feasibly evaluate the extent to which needed overt information is available for collection or determine the need for the intelligence information selected for collation and use in the production of intelligence reports." In short, the Comptroller General was recognizing the conflict between the philosophy underlying a "comprehensive audit approach" and the Director's statutory responsibility and authority to protect intelligence sources and methods.

Both the Director and Chairman Vinson, of the House Committee on Armed Services, requested that the Comptroller General continue to audit Agency affairs on a limited basis, but after another trial period the Comptroller General reiterated his earlier view. In a letter to Chairman Vinson dated June 21, 1962, the Comptroller General stated his belief that for maximum effectiveness "it would be necessary for our GAO audit staff to have nearly complete access to CIA activities," and that even to perform reasonably comprehensive reviews would require "complete access to the administrative activities ... that are performed in support of both sensitive and nonsensitive operations of CIA."

Chairman Vinson replied to the Comptroller General on July 18, 1962, stating that, "the restrictions you met within the Central Intelligence Agency are necessary, I believe, for the proper protection of its intelligence activities and should be maintained." The Chairman agreed, however, that in view of the Comptroller General's opinion that a continued audit was not a worthwhile effort, GAO might withdraw from further audit activities in the Central Intelligence Agency.

In summary, I believe that several points are deserving of emphasis in assessing the nature and history of GAO's audit activities with respect to this Agency:

(a) CIA cooperated fully in all respects in extending administrative support and in granting security clearances and access to information related to vouchered fund activities.

(b) The Chairman of the interested oversight committee in the House of Representatives was fully informed of the nature and status of the activity.

(c) This Agency encouraged GAO to conduct and to continue to conduct its activities consistent with the operational and statutory requirements imposed upon this Agency.

(d) The decision to discontinue the audit activities was made solely by GAO and was approved by the Chairman of the House Armed Services Committee.

Sincerely,



W. E. Colby  
Director



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

B-179296

June 24, 1975

The Honorable W. E. Colby, Director  
Central Intelligence Agency

Dear Mr. Colby:

Thank you for your letter of June 16, 1975, concerning the Deputy Comptroller General's letter of May 10, 1974, which deals with the intelligence community and reviews the GAO's right to audit and obtain information from the CIA.

Your views on Mr. Keller's letter will be helpful in connection with any future comments the GAO may have to make. I must note however that I do not think that Mr. Keller's statements are inconsistent with the facts stated in your letter, although they are not in as much detail in some areas as those you have set forth in your letter. I might add that Mr. Keller was familiar with the background of the audit of CIA by GAO and was a participant in the negotiations during the 1959 to 1962 period.

I appreciate receiving your comments.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James B. Atack", is written over the typed name.

Comptroller General  
of the United States

Excerpts from the testimony of the Comptroller General before this Committee

Mr. Staats, you have been most constructive and most specific.

I would like to paint with a rather larger brush. Does the General Accounting Office, which has the responsibility for representing the Legislative Branch of our Government in overseeing the expenditures of the public moneys, know how much we spend on intelligence?

Mr. Staats. No, sir, we do not. As I have indicated in my statement and in preparing the report for the Senate Government Operations Committee, we were not able to obtain that information specifically.

Chairman Pike. Because of the restrictions which have been placed on your access to information, does the GAO know whether there is duplication in the realm of our intelligence gathering activities?

Mr. Staats. We would have no way of finding out, Mr. Chairman. This information is not available to us and without knowing where the money is and where the people are, we would have no basis for making a judgment of duplication or lack of coordination or poor management.

Chairman Pike. In your letter to this committee, Mr. Staats, you used the first clause of Article I, Section 9, well, it is Clause 7, I guess after that, but you used the first part of that clause regarding no money shall be drawn

Mr. Treen. I would like to get into the question now of your authority to examine accounts. Basically you have authority under 31 USC Sections 54 and 60 which seem to me to contain a rather broad charter. Section 54, Title 31 states that you have the right, "that all departments of the Government shall furnish to you such information regarding the powers, duties, activities, organization, financial Transactions and methods of business of their respective offices as he may from time to time require of them."

You are given the authority to secure and have access to and the right to examine any books, documents, papers, records or documents of any such department or establishment.. Under Section 60 you are authorized and directed to make an expenditure analysis of each agency in the Executive Branch of the Government which in the opinion of the Comptroller General will enable control to determine whether public funds have been efficiently administered and expended.

Before getting your response thereto, I assume that you feel that the appropriations acts that appropriate money that contain provisos about expenditures on the certificate or warrant of the head of an agency cut across these statutes, is that correct?

Mr. Staats. Yes indeed, that is correct, and in the case of CIA there is a specific provision in that act, as you know, which authorizes the Director to make expenditures on his own certificate, which means we do not have any authority to go behind --

Mr. Treen. I would like to examine that a little bit legally. I have never been in this area before, but when Congress says that the head of an agency may expend money on his own certificate, of course that means that he then is given a great deal of discretion in how that money is spent; but do you interpret that to mean that you cannot then look at how it was spent?

Mr. Staats. That is correct.

Mr. Treen. He is given the authority to spend it?

Mr. Staats. That is correct. Legislation has been introduced in the House which would go part way. This was introduced by Congressman Eckhardt January 16th of this year for himself and a number of other members which would at least authorize us to go behind that to the extent of making a judgment as to whether it was in fact a justifiable certificate in the sense of being secret or confidential.

Mr. Treen. You don't think you have that authority now? Are there any court decisions upon which you base that opinion?

Mr. Staats. No, sir.

are you telling us that whether or not you performed an audit is, itself, classified information?

Mr. Staats. That is my advice at the moment, Mr. Chairman, with respect to a specific operation, that that would be the case; right.

Chairman Pike. The matter will be either provided for the record or heard in executive session at some subsequent time.

Mr. Dellums. Thank you, Mr. Chairman.

(The information will be found in the files of the committee.)

Mr. Dellums. Is it correct you did do an audit on the divestiture of two proprietary companies?

Mr. Staats. We were asked to look at whether or not the procedures that they went through to divest themselves of these interests was an adequate procedure and we did get that information and we rendered an opinion on it.

Mr. Dellums. Did you look at or audit the profit and loss statement of either or both of these proprietary companies?

Mr. Staats. I am sorry, I didn't get the first part of your question.

Mr. Dellums. Did you look at or audit the profit and loss statement of either one or both of these proprietary companies?

Mr. Staats. I am advised we did not.



statement, where we are simply told that that is information not available to us.

Mr. Johnson. Then you do not pursue that further?

Mr. Staats. We have no way to pursue it.

Mr. Johnson. I hesitate to use the word "stonewalled" but when you run into that stone wall attitude, do you take it for granted you haven't authority to pursue it? How do you know it doesn't go beyond intelligence activities?

Mr. Staats. With our present authority, we are not able to go beyond that question. If we are able to get them to give us information on a voluntary basis, we make that effort, but it is their decision to make, not ours.

Mr. Johnson. I understand that the CIA has statutory authority to do as it pleases with the money and I agree with your interpretation of that.

You have mentioned in your testimony or in your letter, I have forgotten which, that in response to a letter concerning Senator Percy's request, that you did not get responses from the CIA, the Defense Department, and the NSA, I believe. You mention that they cited statutory authority. What statutory authority does NSA and the Department of Defense have to refuse to give you information legitimately requested?

Mr. Staats. We have that information here. If you like, we can specify it now or give it to you.

Mr. Johnson. If you can submit that to the committee,

## COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

May 29, 1959

FILE COPY - COMP. GEN.

Honorable Paul J. Kilday, Chairman  
Special Subcommittee, Central Intelligence Agency  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

On May 15, 1959, Mr. A. T. Samuelson, Director of our Civil Accounting and Auditing Division, attended an executive meeting of your Subcommittee to discuss our audit responsibilities and activities at Central Intelligence Agency. At the conclusion of this meeting, it was suggested that recommendations be submitted for the future audit activities by the General Accounting Office at this Agency.

Following the enactment of the Central Intelligence Agency Act of 1949, the then Director of the Agency requested that notwithstanding the very broad and unusual powers granted to the Central Intelligence Agency by the Act an audit of expenditures at the site, as previously performed by the General Accounting Office, be continued. Accordingly, the General Accounting Office has continued to make audits of vouchered expenditures, under the same arrangements that were in effect with the predecessor Central Intelligence Group. However, in view of the provisions of section 10 of the Central Intelligence Agency Act, no exceptions have been taken to any expenditures. In those cases where questionable payments come to our attention, we refer the cases to the CIA Comptroller's Office for corrective action. In using the term questionable payments, we mean any expenditures which, except for section 10 (a) of the Act, would appear to be improper or illegal either under law or under the decisions of the Comptroller General. In our audit work, we have not made a substantive review of Agency policies, nor of its practices and procedures, and we have made no audit of expenditures of unvouchered funds.

Since the enactment of Central Intelligence legislation, we have generally broadened the type of audit we make of the activities of most Government agencies. Under our comprehensive audit approach, our basic purpose is to review and evaluate the manner in which the agency or activity under audit carries out its financial responsibilities. We construe financial responsibilities as including the expenditure of funds and the utilization of property and personnel in the furtherance only of authorized programs or activities in an effective, efficient, and economical manner. In carrying out this kind of an

audit, we examine the organization structure and review the established agency policies for conformity with legislative intent and applicability to agency activities. We also examine agency practices and procedures followed in carrying out the agency policies and make selective examinations of actual transactions as a means of appraising the application of agency practices and procedures. Reports on the results of our work are submitted to the Congress and to agency management officials.

We believe that a broader type of audit is appropriate for our work at Central Intelligence Agency and is more likely to be productive of evaluations of the administrative functions which would be helpful to the Congress and the Agency Director. We have accordingly concluded that it would be desirable to expand our audit work at Central Intelligence Agency more in line with our regular comprehensive audit approach. The expanded work would include an examination of vouchered expenditures, and, at the outset, the controls and procedures used in processing unvouchered expenditures. Also we would propose to make a limited examination of the support for unvouchered expenditures in accordance with such agreement as to access as can be worked out between CIA and our Office. As indicated by the preceding comments we have heretofore carried out only limited audit work at CIA, and we do not believe such limited work should be continued.

At this time we do not recommend any change in section 16 of the Central Intelligence Agency Act. We believe, however, that your Subcommittee could be very helpful in effecting a change in the scope of our audit work at CIA by advising the Agency of your interest in broadening the audit performed by the General Accounting Office. Any broadening of our audit activities should not include an evaluation of the intelligence activities of the Agency.

We are prepared to discuss this matter further at your convenience.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General  
of the United States



## CENTRAL INTELLIGENCE AGENCY

WASHINGTON 25, D. C.

OCT 20 9 01 AM '59  
OFFICE OF THE DIRECTOR

*W. Samuelson*  
*W. K. Sullivan*

B-133200

16 OCT 1959

RECEIVED  
INDEX

OCT 21 1959

G.A.O.

The Honorable Joseph Campbell  
The Comptroller General of  
the United States  
Washington 25, D.C.

Dear Mr. Campbell:

Since we had the pleasure of briefing you on 30 July, we have discussed further with Mr. Samuelson how the General Accounting Office's audit of this Agency might be improved. I believe that the General Accounting Office can expand its current audit activities in a considerable portion of the Agency, and in moving forward in this direction I feel that we should reach agreement on certain fundamental aspects.

In the Central Intelligence Agency Act of 1949, the Congress, recognizing some of the unique problems involved in the conduct of intelligence activities, provided broad authorities over the expenditure of and accounting for Agency funds. In particular, Section 8 of that Act (formerly Section 10) provides that expenditures for objects of a confidential, extraordinary, or emergency nature are "to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified." This wording does not contemplate the review of expenditures which the Director certified were made for confidential, extraordinary, or emergency purposes.

While all funds appropriated to the Agency are technically on an "unvouchered" basis, it has been my policy and that of my predecessors to limit the exercise of this special authority to those activities which in the national interest should have the maximum security protection. To the extent possible Agency funds are expended under the other provisions of the Central Intelligence Agency Act and the vouchers for these expenditures are available to the General Accounting Office. This policy has been exercised to such a degree that certain activities, not in themselves sensitive but conducted solely in support of highly

confidential operations, are funded under general authorities without invoking my special authority to make final accounting therefor. A comprehensive audit of the sort now conducted by the General Accounting Office in other agencies, if applied to our so-called vouchered expenditures, would necessarily reach into the confidential operations which they support and which are protected by my special authority under Section 8 of the Act. In these instances, therefore, the comprehensive audit would have to be limited so as to remain outside the area of sensitive security operations.

In view of the statutory background, I trust that you will agree with the position set forth above. If you have any question I would be delighted to discuss the subject with you at your convenience. If we are in agreement on these fundamental principles, I suggest that your representatives continue to explore with my Staff the manner in which the scope of the General Accounting Office's audit of the Agency may be broadened, consistent with the security requirements described above.

Sincerely,



Allen W. Dulles  
Director

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-133200

October 21, 1959

Honorable Allen Dulles, Director  
Central Intelligence Agency

FILE COPY - COMP. GEN.

Dear Mr. Dulles:

Your letter dated October 16, 1959, concerning a proposed extension of our audit of Central Intelligence Agency has been reviewed, and further discussions have been had between representatives of this Office and your Staff.

Your letter notes the unique problems involved in the activities of the Central Intelligence Agency and the broad authorization given you over the expenditures of and accounting for Agency funds. In recognition thereof, you indicate that an audit of the Central Intelligence Agency would have to be limited to reviews outside the area of sensitive security operations on:

- (1) Expenditures certified by the Director under Section 3 of the Central Intelligence Agency Act of 1949, as amended.
- (2) Certain activities in support of confidential operations protected by your authority under Section 8.

We agree that to the extent expenditures are certified by you as confidential, extraordinary, or emergency nature, such expenditures are not subject to examination by us without your concurrence.

In our comprehensive audits, we examine the organization structure, agency policies, and agency practices and procedures, together with a selective examination of actual transactions as a means of appraising the application of agency practices and procedures. As a result of the discussions with your Staff it seems possible for the General Accounting Office to expand its audit at the Central Intelligence Agency into a considerable part of the Agency's activities, even though our reviews would be outside the area of sensitive security operations. Despite the limitation, we believe as a result of the reviews we could make that we would be in a position to make evaluations of a substantial part of the administrative functions.

The Central Intelligence Agency presents problems on sufficient breadth of coverage and review of detail for the purpose of reaching sound evaluations, but we are willing to broaden our activities at Central Intelligence Agency within the principles expressed in your letter. However, in the event it appears after a trial period that our reviews are limited to such an extent that we cannot effectively and constructively accomplish any worthwhile objectives, we will have to consider whether the audit should be continued.

On the basis of the above, we are willing to have further discussions with your Staff in order that the audit may proceed.

Sincerely yours,

Joseph Campbell

Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-133200

October 21, 1959

FILE COPY - COMP. GEN.

Honorable Paul J. Kilday, Chairman  
Special Subcommittee, Central Intelligence Agency  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

Enclosed for your information is a copy of a letter to Mr. Allen Dulles, Director, Central Intelligence Agency, on the proposed extension of the audit at Central Intelligence Agency. In this letter we state we are willing, on a trial basis, to broaden our activities at Central Intelligence Agency within certain principles outlined in Mr. Dulles' letter of October 16, 1959.

Sincerely yours,

Joseph Campbell

Comptroller General  
of the United States

Enclosure ✓





COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

-63-

B-133200

MAY 16 1961

COMP. GEN.  
FILE COPY

Honorable Allen Dulles, Director  
Central Intelligence Agency

Dear Mr. Dulles:

The General Accounting Office has completed a review of selected overt activities of the Central Intelligence Agency. Based on this review, we believe that under existing security restrictions on the General Accounting Office audit of CIA activities, we do not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress.

Our review of selected overt activities in the Intelligence Component disclosed certain matters that were brought to the attention of CIA officials, and we were advised by them that corrective action on these matters is to be taken, or is presently under consideration by CIA.

I wish to acknowledge the cooperation of CIA officials in taking various steps to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA.

Transmitted herewith is a copy of a letter sent today to the Chairman, Special Subcommittee, Central Intelligence Agency, Committee on Armed Services, House of Representatives, presenting the results of our review.

Sincerely yours,

Comptroller General  
of the United States

Attachment

~~CONFIDENTIAL~~

CAB 11

-64-

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

MAY 16 1961

Mr. Paul J. Kilday, Chairman  
Special Subcommittee, Central Intelligence Agency  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

The General Accounting Office has made a review of selected activities of the Central Intelligence Agency (CIA) for the purpose of determining whether the scope of the audit of the General Accounting Office could be expanded sufficiently to make reasonably comprehensive evaluations of CIA activities that would be helpful to the Congress.

This review was made pursuant to the interest indicated by the Special Subcommittee at an executive hearing in May 1959. Following several meetings between representatives of the General Accounting Office and CIA, the Director of Central Intelligence and the Comptroller General in October 1959 had an exchange of correspondence concerning the audit and concerning restrictions on undertaking reviews in the area of sensitive security operations. Various steps were taken by CIA to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA. It is our view, however, that under existing security restrictions on our audit of CIA activities, we do not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress.

We limited our review to selected overt activities as access to the covert (confidential) activities of CIA was denied us. We have had no access whatsoever to the Plans Component, and we cannot effectively review and evaluate the activities of the Support Component because the confidential and overt activities of this component are integrated to such an extent that we cannot make reasonably comprehensive audits. We have been given sufficient access to make reasonably comprehensive reviews of the overt activities of the Intelligence Component, but such reviews, in our opinion, will not be productive of significant evaluations because we cannot feasibly evaluate the extent to which needed overt information is available for collection or determine the need for the intelligence information collected for collation and use in the production of intelligence reports. About 90 percent of the annual expenditures of the Intelligence Component relates to payroll and other contractual payments for personal services rendered in selecting on the basis of personal judgment under broad guidelines established by the intelligence community the specific information to be collected, collated, and used in the production of intelligence reports.

~~CONFIDENTIAL~~

Based on our review, we believe that (1) CIA is financing certain Library of Congress activities which substantially transcend CIA's interest and responsibility for providing a centralized reference service as a service of common concern to the intelligence community and (2) administrative controls over CIA's covert field organization, the U.S. Joint Publications Research Service, should be strengthened. In addition, we have questioned the arrangements under which CIA is financing certain activities at the Department of State.

Two projects at the Library of Congress, the Monthly Index of Russian Accessions and the East European Accession Index, are being financed through the operating budgets of the Office of Central Reference. The budget of this office includes \$685,000 to finance these projects in fiscal year 1961. The projects produce publications which are primarily distributed to public and private research organizations and libraries in the United States and many foreign nations, including some in the U.S.S.R. and its satellites. These projects, in our opinion, substantially transcend CIA's interest and responsibility for providing a central reference facility as a service of common concern to the intelligence community.

We have been advised by CIA that based on a review of the needs of the intelligence community, it has been determined that the present published form of these indexes is not essential for intelligence purposes, but, there are portions of the research work that goes into the preparation of the indexes that CIA would want to continue, and the matter is under active consideration to determine what portion of the related costs should continue to be financed by CIA.

Certain administrative procedures pertinent to CIA's control over the activities of its covert field organization, the U.S. Joint Publications Research Service, should be strengthened. We have been advised by CIA that changes are to be made which will strengthen these controls.

Two projects at the Department of State, the National Intelligence Survey and Biographic Intelligence, are being financed by CIA through the operating budgets of the Office of Central Reference and the Office of Basic Intelligence. The budgets of the two offices include \$2,417,000 to finance these projects in 1961. In April 1961, we were advised by CIA that the Department of State and CIA have been considering the possible transfer of these Department of State activities to CIA. CIA presently has under consideration other matters raised by us on these financing arrangements, and we will furnish you with a supplementary letter when decision has been reached thereon.

In as much as we cannot, in our opinion, effectively accomplish any worthwhile audit objectives on a continuing basis, we plan to discontinue our audit of CIA activities.

CONFIDENTIAL

We are prepared to discuss these matters with you should you so desire.

A copy of this letter is being sent today to the Director of Central Intelligence.

Sincerely yours,

*ls.*

Comptroller General  
of the United States

~~CONFIDENTIAL~~



## CENTRAL INTELLIGENCE AGENCY

WASHINGTON 25, D. C.

OFFICE OF THE DIRECTOR

MAY 18 10 13 AM 1961

17 May 1961

The Honorable Joseph Campbell  
Comptroller General of the United States  
Washington 25, D.C.

KZ

Dear Mr. Campbell:

I have your letter of 16 May 1961 enclosing a copy of your letter of the same date to the Honorable Paul J. Kilday with regard to your review of selected activities of the Central Intelligence Agency for the purpose of determining whether the scope of the audit of the General Accounting Office could be expanded.

I wish to express my appreciation for your cooperation and understanding since our exchange of correspondence in October of 1959 which formed the basis on which we have jointly attempted to expand GAO audit activities in the Central Intelligence Agency. The reviews made by your representatives have brought a number of matters to our attention which have been helpful and on which corrective action either has been or is being taken.

I believe that over the years the audit of Agency activities by the General Accounting Office has been most beneficial and regret that you plan to discontinue it completely. Before final action is taken I should like very much to discuss with you the possibility of your continuing an audit on some scale.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allen W. Dulles".

Allen W. Dulles  
Director

EIGHTY-SEVENTH CONGRESS

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HOUSE OF REPRESENTATIVES  
 COMMITTEE ON ARMED SERVICES  
 SUITE 313, HOUSE OFFICE BUILDING  
 WASHINGTON 25, D.C.

JOHN R. BLANDFORD, COUNSEL  
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 FRANK M. SLATINSKY, COUNSEL

May 18, 1961

CONFIDENTIAL

MAY 18 4 03 P.

Honorable Joseph Campbell  
 Comptroller General of the United States  
 Washington 25, D. C.

Dear Mr. Campbell:

This is with reference to your letter of May 16 to Honorable Paul J. Kilday, Chairman, Subcommittee on the Central Intelligence Agency, Committee on Armed Services.

Mr. Kilday and I have discussed the contents of your letter at some length and in view of the course of action which you contemplate, I feel it incumbent upon me to promptly express my judgment on this matter.

As you know, Mr. Kilday's Subcommittee gave considerable attention to the audit conducted by the General Accounting Office of the Central Intelligence Agency. It was fully recognized that there were certain restrictions on the scope of the audit by the General Accounting Office, which restrictions were inherent in a relationship of this nature. However, the Subcommittee was of the firm opinion that even a limited audit of overt accounting actions would serve a worthwhile purpose. In furtherance of that judgment, the Subcommittee concluded that the limitations which were inherent required more experienced representatives of your office than had been assigned to this function. The Committee was gratified that you concurred in that judgment and improved the quality of the representatives so assigned.

I am of the firm opinion that the points which you raise in your letter to Mr. Kilday should be the subject of further discussions between the Committee, the General Accounting Office, and the Central

CONFIDENTIAL

Honorable Joseph Campbell  
Page Two

May 18, 1961

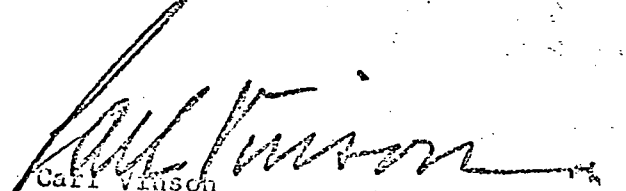
Intelligence Agency. Pending the completion of those discussions, I can not recommend too strongly against the course of action which you propose in the final paragraph on page two of your letter. I know you must fully appreciate that there are other overriding considerations which can not be divorced, under prevailing circumstances, from any change in the existing relationship between your office and the Central Intelligence Agency.

I trust you will agree with my firm belief that there is nothing in this situation which requires precipitous action. On the other hand, I want to assure you that the matters set forth in your letter will be the subject of further consideration by Mr. Kilday's Subcommittee, in full consultation with your office, at a time which better accommodates the overriding requirements of national interest.

I would appreciate a response to this expression of my views.

With kindest regards, I am

Sincerely,



Carl Vinson  
Chairman



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-133200

MAY 23 1961

Honorable Carl Vinson, Chairman  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

We acknowledge your letter dated May 18, 1961, responding to our letter of May 16 to the Honorable Paul J. Kilday, Chairman, Subcommittee on the Central Intelligence Agency, Committee on Armed Services, relating to our reviews at the Central Intelligence Agency.

We are mindful of the interest in our reviews at CIA as expressed by Chairman Kilday and members of his Subcommittee to a representative of our Office at an executive meeting on May 15, 1959. After considering these views we informed Chairman Kilday by letter dated May 23, 1959, that we believed a broader type of audit more in line with our regular comprehensive audit approach was appropriate for our work at CIA. The expanded work would include an examination of vouchered expenditures, and, at the outset, the controls and procedures used in processing expenditures. In addition, we would make an examination of the support for unvouchered expenditures in accordance with such agreement as to access as could be arranged between CIA and our Office. We also stated in this letter that heretofore we had carried out only limited audit work at CIA and that we did not believe such limited work should be continued.

Following several meetings with the Director, Central Intelligence Agency, and members of his staff, we exchanged correspondence in October 1959 which in essence recognized that an audit of Central Intelligence Agency would have to be limited to reviews outside the areas of sensitive security operations on:

- (1) Expenditures certified by the Director under Section 8 of Central Intelligence Act of 1949, as amended.
- (2) Certain activities in support of confidential operations protected by the authority to the Director under Section 8.



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We agreed that to the extent expenditures were certified by the Director as being of a confidential, extraordinary, or emergency nature, such expenditures were not subject to examination by the General Accounting Office without the concurrence of the Director. Nonetheless, we were willing to broaden our activities at CIA within the principles laid down by the Director in his letter of October 16, 1959, but we stated in our reply dated October 21, 1959, that in the event it appeared after a trial period our reviews were limited to such an extent that we could not effectively and constructively accomplish any worthwhile objectives we would consider whether or not the audit should be continued.

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During the ensuing 18 months we undertook to make reviews of selected overt activities as access to the covert activities was not made available to us. In this connection, access to the activities of the Support Component in which we could be expected to be most effective in our reviews was significantly limited because covert and overt activities of this component are integrated. We were not able to review sufficiently financial management, property management, procurement, and similar activities for any effective appraisal of the administration of these activities. Our access for a review of the internal audit program and reports was very limited and we had no access whatever to the work of the Inspector General; therefore, we were not able to appraise the internal review mechanisms within the Agency. We have had rather complete access to the activities of the Intelligence Component, but the nature of these activities and the lack of complete access to internal review programs and reports has significantly limited our effectiveness in this area.

In undertaking to broaden our reviews at the Central Intelligence Agency, we recognized that the nature of the activities of this Agency presented problems on sufficient breadth of coverage and review of detail for the purpose of reaching sound conclusions. We made every effort to broaden our review of the activities of the Agency within the limitations which were placed on us, and we wish to assure you our conclusion that we could not effectively accomplish any worthwhile audit objectives at CIA on a continuing basis was reached only after considering all the factors as we saw them. However, having in mind your firm belief that our work should not be discontinued we will continue our limited program.

We note from your letter that Chairman Kilday's Subcommittee will further consider the contents of our letter of May 16, and we shall be prepared to meet with him and the members of his Subcommittee at their convenience.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General  
of the United States

~~CONFIDENTIAL~~

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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-133200

MAY 23 1961

Honorable Allen Dulles, Director  
Central Intelligence Agency

Dear Mr. Dulles:

We acknowledge your letter dated May 17, 1961, responding to our letter of May 16 to you relating to our reviews at the Central Intelligence Agency.

We acknowledge also your appreciation in our joint attempt to expand the General Accounting Office activities at the Central Intelligence Agency and your comment that the reviews made by our representatives have been helpful. As noted in our letter of May 16, 1961, we do not believe that we have had sufficient access to permit us to make reviews sufficient in scope to be helpful to the Congress and for this reason we planned to discontinue the audit at this time. Your letter notes that over the years the work of the General Accounting Office has been most beneficial to you.

We believe it is appropriate here to clarify the scope of our work program preceding the reviews that were undertaken following our exchange of letters in October 1959.

Following the enactment of the Central Intelligence Agency Act in 1949, the then Director of the Agency requested that notwithstanding the very broad and unusual powers granted to the Central Intelligence Agency by the act an audit of expenditures at the site as previously performed by the General Accounting Office be continued. Accordingly the General Accounting Office continued to make audits of vouchered expenditures under the same arrangements that were in effect with the predecessor Central Intelligence Group. In view of the provisions of Section 8 of the Central Intelligence Agency Act no exceptions were taken to any expenditures but questionable payments coming to our attention were referred to the CIA Comptroller's Office for corrective action. We did not make a substantive review of Agency policies nor of its practices and procedures and we made no audit of expenditures of unvouchered funds.

However, at the time of the enactment of CIA legislation in 1949 we were in the process of applying the comprehensive audit approach to the activities of most Government agencies. Under this audit approach our basic purpose is to review and evaluate the manner in which the agency or activity under audit carries out its financial responsibilities. We construe financial responsibilities as including the expenditure of funds and the utilization of property and personnel in furtherance only of authorized programs or activities in an effective, efficient and economical manner. In carrying out this type of audit we examine the organization's structure and review the established agency policies for conformity to legislative intent and applicability to agency activities. We also examine agency practices and procedures followed in carrying out the agency policies and make a selective examination of actual transactions as a means of appraising the application of agency practices and procedures. It was this kind of a review that we proposed for the Central Intelligence Agency in accordance with whatever agreement we could reach with you as to access to the records. Our work during the last 18 months has demonstrated to us that under existing security restrictions we do not have sufficient access to make comprehensive reviews of CIA activities on a continuing basis that would be productive of evaluations helpful to the Congress.

We deeply appreciate your interest in the possibility of continuing our work at the Central Intelligence Agency on some scale and we are prepared to discuss this prospect at your convenience. For the present and pending discussions with you and appropriate congressional interests, we will continue our limited program.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General  
of the United States

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-133200

JUN 21 1962

Honorable Carl Vinson, Chairman  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

By letter dated May 16, 1961, to Honorable Paul J. Kilday, Chairman, Special Subcommittee, Central Intelligence Agency, Committee on Armed Services, House of Representatives, we reported upon our review of selected activities of Central Intelligence Agency (CIA) for the purpose of determining whether the scope of the audit of the General Accounting Office could be expanded sufficiently to make reasonably comprehensive evaluations of CIA activities. In this letter we stated that under the existing security restrictions on our audit of CIA activities we did not have sufficient access to make comprehensive reviews on a continuing basis that would be productive of evaluations helpful to the Congress and that we planned to discontinue the work.

Your letter to us dated May 18, 1961, recommended that the audit not be discontinued at that time and accordingly we have continued our work at CIA despite the severe limitations placed upon us. Our further reviews, confined wholly to certain units in the Intelligence Component, have not resulted in any change in our views that under existing security restrictions on our audit of CIA activities we do not have sufficient access to effectively accomplish any worthwhile audit objectives at CIA on a continuing basis. We are submitting this letter so that you may consider further our views on this matter at this time.

The limitations placed upon our audit activities at CIA are severe. Following several meetings with the Director, Central Intelligence Agency, and members of his staff, we exchanged correspondence in October 1959 which in essence recognized that an audit of CIA would have to be limited to reviews outside the areas of sensitive security operations on:

- (1) Expenditures certified by the Director under Section 8 of Central Intelligence Act of 1949, as amended.
- (2) Certain activities in support of confidential operations protected by the authority to the Director under Section 8.

~~CONFIDENTIAL~~

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We agreed that to the extent expenditures were certified by the Director as being of a confidential, extraordinary, or emergency nature, such expenditures were not subject to examination by the General Accounting Office without the concurrence of the Director. The activities in support of the confidential operations embraced practically all of the administrative operations. Nonetheless, we were willing to attempt to make an audit at CIA within the principles stated by the Director in his letter of October 16, 1959, but in our reply dated October 21, 1959, we stated that in the event it appeared after a trial period our reviews were limited to such an extent that we could not effectively and constructively accomplish any worthwhile objectives we would consider whether or not the audit should be continued.

During the ensuing 30 months we undertook to make reviews of selected overt activities as access to the covert activities was not made available to us. In this connection, access to the activities of the Support Component in which we could be expected to be most effective in our reviews was significantly limited because covert and overt activities of this component are integrated. We were not able to review sufficiently financial management, property management, contracting, procurement, and similar activities for any effective appraisal of the administration of these activities. Our access for a review of the internal audit program and reports was very limited and we had no access whatever to the work of the Inspector General; therefore, we were not able to appraise the internal review mechanisms within the Agency. We have had rather complete access to the activities of the Intelligence Component, but the nature of these activities and the lack of complete access to internal review programs and reports has significantly limited our effectiveness in this area.

In undertaking to make reviews at the Central Intelligence Agency, we recognized that the nature of the activities of this Agency presented problems on sufficient breadth of coverage and review of detail for the purpose of reaching sound conclusions. We have made every effort to broaden our review of the activities of the Agency within the limitations which were placed on us, and we wish to assure you that our conclusion that we could not effectively accomplish any worthwhile audit objectives at CIA on a continuing basis was reached only after considering all the factors as we saw them.

To obtain the maximum effectiveness of a General Accounting Office audit of CIA activities, it would be necessary for our audit staff to have nearly complete access to CIA activities. However, we believe it to be possible to perform reasonably comprehensive reviews of CIA activities if we were permitted complete access to the administrative activities, such as financial, procurement, property, and personnel

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management and internal review activities that are performed in support of both sensitive and nonsensitive operations of CIA.

We appreciate your interest in our work at CIA and the expression of your views on the discontinuance of our work there is invited. We are prepared to discuss these matters further with you.

Sincerely yours,

Joseph Campbell

Comptroller General  
of the United States

*Polle*  
*6-21-62*

*Samuelson*

*6/21/62*

~~CONFIDENTIAL~~

- 3 -

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# HOUSE OF REPRESENTATIVES COMMITTEE ON ARMED SERVICES

SUITE 317, HOUSE OFFICE BUILDING  
WASHINGTON-25, D.C.

July 18, 1962

*Proupte*  
*W. Kelleher* *7/19/62*  
*W. Samuelson*  
*12/*

Honorable Joseph Campbell  
The Comptroller General  
of the United States  
Washington 25, D. C.

Dear Mr. Campbell:

I have read your letter of June 21, 1962, concerning the restrictions on your performance of an audit of the Central Intelligence Agency and your opinion that as a result of these restrictions you could not effectively accomplish any worthwhile audit objectives at the Central Intelligence Agency.

I believe the restrictions you met with in the Central Intelligence Agency are necessary for the proper performance of its intelligence activities and should be maintained. Also, Mr. McCone has informed me that among the reorganizational steps he has carried out is a major strengthening of the comptroller and internal audit functions in the Agency. Consequently, I believe you have met the objectives of my letter of May 18, 1961, which recommended that you continue your work in the Agency at that time, and since after this trial period you feel confirmed in your opinion that it is not a worthwhile effort, I will accept your conclusion that you should withdraw from further audit activities in the Central Intelligence Agency.

Sincerely,

*Carl Vinson*  
Carl Vinson  
Chairman



COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON

JUL 26 1962

COMP. GEN.  
FILE COPY

Dear Mr. Chairman:

Your letter dated July 18, 1962, on further audit activities by the General Accounting Office at Central Intelligence Agency is acknowledged.

Your acceptance of our conclusion that we withdraw from further audit activities at this Agency is appreciated and we will proceed to complete the work that is in process at a relatively early date.

Sincerely,

Joseph Campbell

Comptroller General  
of the United States

Honorable Carl Vinson  
Chairman, Committee on  
Armed Services  
House of Representatives





COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

B-179296

July 31, 1975

The Honorable Otis Pike, Chairman  
Select Committee on Intelligence  
House of Representatives

Dear Mr. Chairman:

The Committee has requested our assistance in updating material we furnished to Senator William Proxmire in a letter dated May 10, 1974. The letter discussed congressional oversight and control over U.S. intelligence activities and our involvement in reviewing and auditing such activities. We have also been asked to identify various restrictions placed on our access to intelligence personnel and information and their effect on our work and to recommend any changes we believe would improve our effectiveness or facilitate the congressional oversight function in this area.

Our May 1974 letter includes as part of the U.S. intelligence community the National Security Council; Central Intelligence, Defense Intelligence, and National Security Agencies; Army, Navy, and Air Force intelligence components; Federal Bureau of Investigation; Department of the Treasury; Atomic Energy Commission (now the Energy Research and Development Administration); and Bureau of Intelligence and Research of the Department of State.

CONGRESSIONAL OVERSIGHT AND CONTROL

Our May 1974 letter pointed out that the determination made in 1949--that congressional oversight would be limited to reviews by the relatively few members serving on designated oversight committees or subcommittees--remained unchanged, although there has been extensive and increasing concern on the part of individual Members of Congress with the level of oversight and independent surveillance over the intelligence community.

Also, we pointed out that various Members of Congress have in the past raised the question of the sufficiency of congressional access to information about the activities of the intelligence community in light of the constitutional provision that no money may be spent from the public treasury unless appropriated by Congress.

As your Select Committee addresses the question of the adequacy of U.S. congressional oversight and control of U.S. intelligence activities, the information discussed below concerning our role may be useful.

GAO ACTIVITIES IN THE  
INTELLIGENCE COMMUNITY

GAO's basic audit authority is contained in the Budget and Accounting Act of 1921, the Accounting and Auditing Act of 1950, and the Legislative Reorganization Act of 1970. These statutes direct GAO to examine and audit the activities of each executive branch agency and grant GAO access to these agencies' records and information as necessary to discharge this responsibility. GAO's authority is extensive, encompassing not only financial auditing but also management reviews and evaluations of programs and activities. Broad access to records and information is necessary to accomplish these tasks. However, certain restrictions on GAO audit authority are provided by law, including instances where moneys are accounted for solely on certification by the head of a department or establishment. Appendix I details the primary statutory provisions for GAO audits and reviews of agency activities and identifies specific statutory restrictions on audits of the intelligence community.

As discussed in our May 10, 1974, letter, our contacts with and work in the intelligence community over the years have been limited. We stated that we had had sufficient contact to enable us to identify basic problems involved in obtaining information from and about intelligence organizations. In addition to basic disagreement over our right of access to certain information, the intelligence community generally requires special security clearances, which are expensive to process and require at least 6 months or more to complete.<sup>1/</sup>

Currently, 11 GAO professional staff members have the special clearances required to examine military intelligence matters. This is all that have been requested, except for two additional clearances, requested recently,

<sup>1/</sup> Clearances for top secret defense data and restricted atomic energy data are not considered sufficient for access to intelligence data.

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that are in process. Three of these professional staff members are presently involved in work at the National Security Agency; the remaining eight are at the management levels in Washington.

Our May 10, 1974, letter outlines various instances in which we tried to examine certain intelligence matters but were unable to gain access to the necessary information. The following cases illustrate our experience in performing reviews within or related to intelligence activities since May 1974.

1. In July 1974 the Chairman, Special Subcommittee on Intelligence, House Committee on Armed Services, requested us to examine the reasonableness of the divestiture of a proprietary interest by the Central Intelligence Agency. After discussions with Subcommittee representatives the request was modified to that of an examination of the reasonableness of the Agency's procedures for achieving the divestiture, due to the limited time available prior to execution of the divestiture. This examination was made by personnel having no special intelligence security clearance, although they had other security clearances. A report on this matter was issued to the Subcommittee in August 1974.

2. At the request of the Chairman, House Judiciary Committee, we are reviewing the Federal Bureau of Investigation's domestic intelligence operations. This review involves examining policies, procedures, and the application of resources to these operations. To determine how the Bureau carries out its domestic intelligence activity, it is necessary for us to review investigative cases.

The Bureau was concerned that GAO's having free access to its domestic intelligence files could negatively effect its capability to develop informants and conduct intelligence investigations. Accordingly, a procedure was worked out whereby the Bureau prepared special summaries of the case files randomly selected by GAO for review. These Bureau-prepared summaries and followup interviews with appropriate personnel associated with the sample cases is providing information on how the Bureau's policies and procedures are carried out in domestic intelligence investigations. To ensure the accuracy of the summaries, however, we need to verify the information contained in the case summaries.

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We proposed a verification procedure by which we would randomly select documents from the case files and insure that these documents were accurately reflected in the summaries. The Bureau could block out the names of its informants from the documents before giving them to us. However, the Attorney General and the Bureau's Director have not, to date, been willing to allow us access to these documents and have so notified the Chairman of the Judiciary Committee; therefore our report to the Committee will be based largely on unverified data furnished by the Bureau.

3. In October 1974 the Chairman, Subcommittee on Europe, House Committee on Foreign Affairs (now Committee on International Relations) requested us to examine the adequacy of executive branch procedures for monitoring the provisions of Joint Resolution 1167 relating to the conditions Turkey was to meet to preclude a cutoff of U.S. aid. We were unable to obtain and verify Central Intelligence Agency information or analyses that we believed necessary, and consequently we could not make the requested review.

4. On November 4, 1974, Senator James Abourezk requested us to identify former oil company officials currently employed by 11 Federal agencies, including the Central Intelligence Agency. On January 17, 1975, the Comptroller General sent a letter to the Director, Central Intelligence Agency, requesting this information. The Agency has not responded to this letter, and efforts to contact the Agency to determine whether it plans to respond have been unsuccessful. We have drafted a report to the Senator that contains no information from the Central Intelligence Agency.

5. In May 1975 the Chairman, Special Subcommittee on Intelligence, House Committee on Armed Services, requested us to examine the reasonableness of the procedures followed in the divestiture of a second proprietary interest by the Central Intelligence Agency. The Agency gave us excellent cooperation, which permitted us to carry out this review expeditiously.

6. Since May 1974 the Senate Government Operations and Senate Budget Committees have requested us to secure and compile personnel and budget data on U.S. intelligence agencies and on police and investigative activities throughout the Federal Government. Although we did obtain some

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data on State Department, Atomic Energy Commission, and some Defense Department intelligence activities, we were refused data by the Office of Management and Budget for the Central Intelligence Agency, National Security Agency, and certain other sensitive Defense intelligence activities. We were directed to the congressional intelligence oversight committees for this data. Because select congressional committees have been created to investigate intelligence operations, we decided not to make any further attempts to obtain data on the Central Intelligence and National Security Agencies and sensitive Defense activities.

With respect to the Federal Bureau of Investigation, we were advised that its Intelligence Division performs intelligence and counterintelligence activities relating to sabotage, espionage, and other matters affecting the national security. A Bureau official estimated that 23 percent of the Bureau's resources are directed to security matters carried out primarily by the Intelligence Division. Bureau officials stated, however, that an exact identification of Intelligence Division activities and related funds would require a high-level policy decision within the Bureau before this information could be released. We did not pursue this course because a detailed GAO review of the Bureau is currently being made.

7. At the National Security Agency we have received excellent cooperation to date. Our reviews there in the past were limited to administrative compliance audits; we had not conducted management-type reviews. Recently, however, we began acquiring rather extensive background information on Agency operations, preparatory to undertaking more substantive reviews in selected areas.

Aside from the National Security Agency where broader work is in the preliminary stage, we have not made and are not making self-initiated program and activity reviews within the intelligence community. We are unaware of any information having been given to us with the proviso that, for jurisdictional or security reasons, it not be shared with individual Members or Committees of Congress.

The only legislative changes which have either expanded or restricted our authority since May 1974 involve the deletion of language of Defense appropriation acts under the title "Operation and Maintenance." Before

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1974, these annual appropriation acts contained special language which made the Defense and Service Secretaries' determinations on such confidential expenses final and conclusive on U.S. Government accounting officers. As a result of these restrictions, we were precluded from reviewing these expenditures. Such restrictions have generally been eliminated and we plan to consider these special funds as we select Defense programs for future review. However, from the following table, it may be seen that such funds are only a minor amount of what has been estimated by others to be an aggregate annual intelligence budget of no less than \$6 billion.

Amounts Provided for Confidential Military  
Purposes by the 1974 and 1975  
Department of Defense Appropriation Acts

<u>Operation and maintenance</u>	<u>Fiscal year 1974 (Public Law 93-238)</u>	<u>Fiscal year 1975 (Public Law 93-437)</u>
	(000 omitted)	
Army	\$ 3,069	\$ 2,689
Navy	4,242	3,707
Air Force	2,343	2,293
Defense agencies	5,448	6,518
Contingencies, Defense	<u>5,000</u>	<u>2,500</u>
Total	<u>\$20,102</u>	<u>\$17,707</u>

OBSERVATIONS

In general, GAO has not taken the initiative in pressing for oversight of intelligence operations but has made serious efforts to assist the committees on a request basis. Even so, we continue to have serious difficulty in obtaining information from and about the intelligence community in those limited instances where intelligence information is germane to the issues we are addressing. On occasion, the community cooperates to the extent of giving us certain requested information but even then we are afforded insufficiently broad access to agency records to independently verify the accuracy and/or completeness of the material supplied to us, precluding us from reporting to the Congress in a way that would materially contribute to the exercise of its oversight function.

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Also lacking, in our opinion, is any clear-cut mechanism for acquiring access to information when our views and the agency's views differ as to our right to access, such as power to enforce access in court.

We believe a strong congressional endorsement will be necessary to open the doors to intelligence data wide enough so that we can make the meaningful reviews of intelligence activities that would assist the Congress in performing its oversight function.

We have been asked for our views on how congressional oversight and control over the intelligence community might be improved in the context of the sensitivity necessarily attached to intelligence matters and the desire to reduce the risk of leakage by minimizing the number of people having access to intelligence data. Our experience in the intelligence community, as indicated above and in our letter to Senator Proxmire, has been relatively limited. However, we have had sufficient experience to identify the hard policy questions, outlined below, that we conclude deserve congressional attention and that your Committee undoubtedly will focus upon.

1. Significant amounts of public funds are spent for intelligence, but only a small congressional minority has access to the use planned to be made of these funds. We believe, therefore, that the Congress should once again, as it has in the past, consider the manner in which oversight of the intelligence community is managed in the light of the constitutional provision that no moneys be spent from the public treasury unless appropriated by the Congress. In this regard, the Congress should consider the role GAO is to play in what the Congress ultimately decides should be the requisite congressional approval of intelligence community funding and activities. GAO's role should be sufficiently clarified so that it can determine its reporting responsibilities.

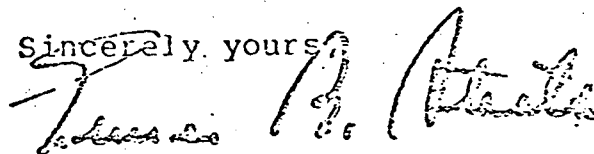
2. The Central Intelligence Agency, in effect, serves as more than an intelligence agency. In addition, a number of authorities have expressed concern that it has been permitted to enlarge its purpose and to exceed the authority contained in its enabling legislation.

We believe the Congress should address the questions of whether some broad policy guidelines and criteria for certain types of covert national security activities should be established by legislation; whether any agency responsible for intelligence collection should also be responsible for carrying out actions; and whether the existing congressional system for identifying, approving, or disapproving significant individual covert projects is adequate.

3. The U.S. intelligence budget annually accounts, according to various estimates by others, for 2 percent to 5 percent of the Federal budget, depending on whether the cost of such things as reconnaissance aircraft and scouting submarines are charged to intelligence or to other functions. The U.S. intelligence operation basically involves (a) determining requirements, (b) collecting, (c) analyzing, and (d) producing and disseminating the product. The U.S. intelligence community is such a highly compartmentalized structure of organization and management that only a few people at the top have visibility and cognizance of all activities. With a large number of agencies involved in intelligence collection, constituting a vast network of collection points, the inherent possibilities for duplication, conflict, and unnecessary collection are substantial. Given this situation, the question arises as to the adequacy of the available management review function. Are the agencies within the intelligence community so organized and structured as to permit such a management review function as an "internal" matter? If not, can they be made so to enhance the possibility of effective congressional oversight management review, either by the oversight committees themselves or with the assistance of GAO or others?

We are hopeful that the above information will be useful to you and your Committee in its studies of U.S. Government intelligence activities.

Sincerely yours,



Comptroller General  
of the United States



Appendix 11

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LEGISLATION RELATING TO THE FUNCTIONS  
AND JURISDICTION OF THE GENERAL  
ACCOUNTING OFFICE

(includes all legislation through 92d Congress)

Prepared by the  
OFFICE OF THE GENERAL COUNSEL  
U.S. GENERAL ACCOUNTING OFFICE

January 1973

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der or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 607 of this title, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

*This restriction unequivocally prohibits the disclosure of any information acquired pursuant to such section except by permission of the Secretary of Agriculture, and then only in a suit or administrative hearing brought at his direction or request. The General Accounting Office does not have the jurisdiction or authority to determine that information needed in an audit may be released to us without subjecting the officers or employees of the Department of Agriculture to the penalties prescribed by statute. The reviews of these milk marketing operations accordingly do not include an examination of milk handlers' records.*

## DEPARTMENT OF DEFENSE

### EMERGENCY OR EXTRAORDINARY EXPENSES

(Based on annual appropriation acts for the military establishment which included funds for emergency or extraordinary expenses to be expended on the approval or authority of the several secretaries. The quoted provisions are from the Department of Defense Appropriation Act, 1969, Public Law 90-580, approved Oct. 17, 1968, 82 Stat. 1120)

#### OPERATION AND MAINTENANCE, ARMY

82 STAT. 1122

For expenses, not otherwise provided for, necessary

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for the operation and maintenance of the Army, \* \* \* and not to exceed \$4,690,000 for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, and his determination shall be final and conclusive upon the accounting officers of the Government; \* \* \*

#### OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation, maintenance, and administration of the Air Force; \* \* \* and not to exceed \$3,311,000 for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, and his determination shall be final and conclusive upon the accounting officers of the Government; \* \* \*

#### OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments and the Office of Civil Defense). \* \* \* and not to exceed \$3,390,500 for emergency and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense for such purposes as he deems appropriate, and his determination thereon shall be final and conclusive upon the accounting officers of the Government. \* \* \*

#### CONTINGENCIES, DEFENSE

For emergencies and extraordinary expenses arising in the Department of Defense, to be expended on the approval or authority of the Secretary of Defense and such expenses may be accounted for solely on his certificate that the expenditures were necessary for confidential military purposes; \$10,000,000: *Provided*, That a report of disbursements under this item of appropriation shall be made quarterly to Congress.

#### OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, \* \* \* and not to exceed \$14,000,000 for emergency and extraordinary expenses, as authorized by section 7202 of title 10, United States Code, to be ex-

pendent on the approval and authority of the Secretary and his determination shall be final and conclusive upon the accounting officers of the Government.

### NAVY DEPARTMENT EMERGENCY AND EXTRA-ORDINARY EXPENSES

(Based on the act of Aug. 2, 1946, 60 Stat. 853, as codified)

16 U.S.C. 7202

(a) Within the limits of appropriations made for the purpose, the Secretary of the Navy may provide for any emergency or any extraordinary expense that arises in the Department of the Navy and that cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary may certify the amount of any such expenditure that he considers advisable not to specify, and his certificate is a sufficient voucher for the expenditure of that amount.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

*In the light of the above restrictions on the military establishments, the GAO audit is confined to examining selected vouchers for these emergency and extraordinary payments to see that they are certified as covering expenditures that are final and conclusive so far as the General Accounting Office is concerned, and that they are otherwise in accordance with whatever information appears on or is attached to the vouchers.*

### DISPOSAL OF SURPLUS PROPERTY

(Based on sec. 203 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 385, as amended—see code section cited for amendments)

Donations to States, Territories, and possessions for educational, public health, or civil defense purposes: allocation; military property

40 U.S.C. 484j

(1) Under such regulations as he may prescribe, the Administrator is authorized in his discretion to donate without cost (except for costs of care and handling) for use in any State for purposes of education, public health, or civil defense, or for research for any such purpose, any equipment, materials, books, or other supplies (including those capitalized in a working capital or similar fund) under the control of any executive agency which shall have been determined to be surplus property and which shall have been determined under paragraph

United States Soldiers' Home, and in accordance with procedure followed prior to such date.

*The legislative history of this proviso reveals a clear intent that the Home not be audited by the General Accounting Office.*

#### KERMIT ROOSEVELT FUND

(Based on the act of July 2, 1945, Public Law 121, 79th Cong., 59 Stat. 316)

Powers of the Kermit Roosevelt Fund Board; Decisions reviewable by Secretary of the Army; annual report, jurisdiction of court

22 U.S.C. 276ee

The board shall have all the usual powers of a trustee in respect to all property administered by it, but the members of the board shall not be personally liable, except for misfeasance, on account of any acts performed in their trust capacity. The members of the board shall not be required to furnish bond, and no additional compensation shall accrue to any of them on account of their duties as trustees. Within the limits prescribed by section 276bb-276dd of this title, the administration, control, and expenditure of this fund and its application to the purposes intended shall be according to the sole discretion of the board, and the exercise of its discretion and authority in regard thereto and its decisions thereon, including any payments made or authorized by it to be made from the Kermit Roosevelt fund, shall not be subject to review except by the Secretary of the Army, to whom the board shall, on the 1st day of January, each year, render a full report of its activities during the preceding 12 months. The actions of the board shall not be subject to judicial review except in an action brought in the United States District Court for the District of Columbia, which is given jurisdiction of such suits, for the purpose of enforcing the provisions of any trust accepted by the board.

*No audit is made of expenditures from this fund in view of the provisions of this law.*

#### DEPARTMENT OF THE NAVY

##### ACCOUNTING FOR APPROPRIATIONS FOR OBTAINING INFORMATION

(Based on provisions in naval service appropriation act for 1917, approved Aug. 29, 1916, Public Law 241, 64th Cong., 39 Stat. 556, 557)

31 U.S.C. 103

Expenditures by the Department of the Navy from the appropriation for obtaining information from abroad and at home shall be accounted for specifically, if, in the judgment of the Secretary of the Navy, they may be made public, and he shall make a certificate of the amount of such expenditures as he may think it

advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended.

## DEPARTMENT OF THE AIR FORCE

### CIVIL AIR PATROL

(Based on the act of May 26, 1948, Public Law 557, 80th Cong., 62 Stat. 274)

The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force. To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in section 202 of title 36 (Federal charter for the Civil Air Patrol), the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense—

(1) give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)—

(A) major items of equipment, including aircraft, motor vehicles, and communication equipment; and

(B) necessary related supplies and training aids; that are excess to the military departments;

(2) permit the use of such services and facilities of the Air Force as he considers to be needed by the Civil Air Patrol to carry out its mission; \* \* \*

*It appears that an audit of CAP activities by GAO would be precluded in the absence of appropriate reservations on the part of the Government.*

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### SLUM CLEARANCE AND URBAN RENEWAL PROGRAM

(Based on 42 U.S.C. 1454; and the definition of "local grants-in-aid" in 42 U.S.C. 1460(d))

#### Requirements for local grants-in-aid

Every contract for capital grants under this subchapter shall require local grants-in-aid in connection with the project involved. Such local grants-in-aid, together with the local grants-in-aid to be provided in connection with all other projects of the local public agency (or two or more local public agencies in the same municipality) on which contracts for capital grants have theretofore been made, shall be at least equal to the total of one-third of the aggregate net project costs of such projects undertaken on a two-thirds capital grant basis and one-

the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam, and all quarantine, passport, immigration, and naturalization fees collected in Guam shall be covered into the treasury of Guam and held in account for the government of Guam, and shall be expended for the benefit and government of Guam in accordance with the annual budgets; except that nothing in this chapter shall be construed to apply to any tax imposed by chapter 2 or 21 of title 26.

*Under Public Law 90-497, approved September 11, 1968, 82 Stat. 842, the office of the government comptroller for Guam was established and provision was made for the review of the activities and reports by the General Accounting Office. See page B-25.*

*The comments concerning the review of the government of the Virgin Islands are applicable to the government of Guam.*

## DEPARTMENT OF JUSTICE

### FEDERAL BUREAU OF INVESTIGATION

(Based on provisions in annual appropriation acts for the Federal Bureau of Investigation. From Department of Justice Appropriation Act, 1969, Public Law 90-470, approved Aug. 9, 1968, 82 Stat. 673)

For expenses necessary for the detection and prosecution of crimes against the United States; \* \* \* and not to exceed \$70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, and to be accounted for solely on his certificate; \$207,450,000: 82 Stat. 674

### IMMIGRATION AND NATURALIZATION SERVICE

(Based on provisions in annual appropriation acts for Immigration and Naturalization Service. From Department of Justice Appropriation Act, 1969, Public Law 90-470, approved Aug. 9, 1968, 82 Stat. 673)

For expenses, not otherwise provided for, necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, \* \* \* not to exceed \$50,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on his certificate: \* \* \* 82 Stat. 675-676

*Our audit of expenditures in the foregoing two categories in which restrictions exist consists of ascertaining, on a test-check basis, whether the vouchers indicate that the payments are for the purposes authorized, are certified by duly authorized persons, and show that the correct appropriations are being charged.*

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## Payment on Calendar Month Basis

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

## Certification

(e) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the *General Accounting Office*, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund. (84 Stat. 711)

DEPARTMENT OF STATE  
ADMINISTRATION OF FOREIGN AFFAIRS

(Based on sec. 291, Revised Statutes)

Settlement of expenses of intercourse with foreign nations

Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgment, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended. <sup>31 U.S.C. 107</sup>

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR  
SERVICE

(Department of State Appropriations Act, 1969, Public Law 90-470,  
approved Aug. 9, 1968, 82 Stat. 667)

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the <sup>82 Stat. 669</sup>



tains a provision for access to records of the Inspector General, Foreign Assistance, by the General Accounting Office unless the President certifies that he has forbidden the Inspector General to furnish the records and the reason for so doing. (84 Stat. 1862)

### PEACE CORPS

(Based on sec. 15(d)(7) of the Peace Corps Act of 1961, Public Law 87-293, Sept. 22, 1961, 75 Stat. 612, at 621, as amended)

22 U.S.C.  
2514(d)(7)

(7) expenditures (not to exceed \$5,000 in any fiscal year except as may be otherwise provided in an appropriation or other Act) not otherwise authorized by law to meet unforeseen emergencies or contingencies arising in the Peace Corps: *Provided*, That a certificate of the amount only of each such expenditure and that such expenditure was necessary to meet an unforeseen emergency or contingency, made by the Director of the Peace Corps or his designee, shall be deemed a sufficient voucher for the amount therein specified;

*Our audit involving these expenditures would be restricted to comparing the amounts on the certificates of expenditures on the vouchers with those on the Statement of Transactions and ascertaining whether the individual certifying the voucher has been properly authorized to certify.*

### FOREIGN CLAIMS SETTLEMENT COMMISSION

(Based on International Claims Settlement Act of 1949, 64 Stat. 12, Sec. 4(h) at Stat. 15-16, as amended, and the War Claims Act of 1948, as amended)

Notification of disposition of claims; right to hearing, finality of Commission's decision

22 U.S.C.  
1625(h)

The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. \* \* \* The action of the Commission in allowing or denying any claims under this subchapter shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

*In view of these restrictions, our examinations of claims adjudicated and paid by the Commission under the acts cited above are limited to ascertaining whether significant computing, typographical, and other clerical errors have been made.*

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## JUDICIAL BRANCH

## SUPREME COURT

## CLERK

(Based on 28 U.S.C. 671(d))

The clerks shall pay into the Treasury all fees, costs and other moneys collected by him. He shall make annual returns, thereof, to the Court under regulations prescribed by it.

*The General Accounting Office has no duty to settle the accounts of the Clerk of the Supreme Court (28 U.S.C. 671), and no right of access to his records (31 U.S.C. 2, 54).*

## MISCELLANEOUS EXPENSES

(Based on annual appropriations acts. The following from the Judiciary Appropriation Act, 1969, Public Law 90-470, approved Aug. 9, 1968, 82 Stat. 683)

For miscellaneous expenses, to be expended as the <sup>82 Stat. 683</sup> Chief Justice may approve, \$140,000.

*Section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b)), expressly vests in the Comptroller General the authority to require that accounts and records of executive agencies be retained at agency sites for audit purposes. As to the legislative and judicial branches, however, this authority may be exercised only through agreements with such branches. Therefore, the General Accounting Office may not unilaterally determine that a site audit will be performed and require the agencies in the legislative branch to retain their accounts and records at the sites, even though it may be determined that site audits are desirable.*

## DISTRICT OF COLUMBIA GOVERNMENT

(Based on provisions in annual appropriation acts. The following from the District of Columbia Appropriation Act, 1969, Public Law 90-473, approved Aug. 10, 1968, 82 Stat. 694)

## GENERAL OPERATING EXPENSES

General operating expenses, \$31,770,000, of which <sup>82 Stat. 695</sup> \$470,500 shall be payable from the highway fund (including \$59,000 from the motor-vehicle parking account), \$80,000 from the water fund, and \$59,000 from the sanitary sewage works fund: *Provided*, That the certificates of the Commissioner (for \$2,500) and of the Chairman of the City Council (for \$2,500) shall be sufficient voucher for expenditures from this appropriation for such purposes, exclusive of ceremony expenses, as they may respectively deem necessary: \* \* \*



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CONFIDENTIAL FUNDS

Current Issues

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April 4, 1975

## CONFIDENTIAL FUNDS

Confidential funds involve the use of certificates, signed by an executive official, as a substitute for vouchers, receipts, and other documentary evidence used in standard accounting and auditing practices. Typical language to authorize a confidential fund would be as follows: "The certificate of (executive official) for such expenditure shall be deemed a sufficient voucher for the sum expended, and such certificate shall be binding and conclusive upon the accounting officers of the Government." Although interpretations have differed in recent years, the General Accounting Office is usually denied an opportunity to audit confidential funds.

There are different types of confidential funds. The first, and most numerous, consists of a two-step process: authorization in substantive legislation, followed by funding in an appropriation act. Generally the authority is of a long-term nature, requiring appropriations from year to year. In the case of the National Space and Aeronautics Administration, dependent on annual authorizations, the authority must be renewed each year.

Second, funds are sometimes appropriated for confidential expenditures without the support of authorizing legislation. Unless a special rule has been adopted to protect the fund, any Member of Congress may raise a point of order against the fund on the ground that it represents legislation in an appropriation bill. A number of parliamentary challenges have been made on that basis in recent years.

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Third, in the case of foreign assistance, there is substantive authority for confidential spending. However, specific sums are not appropriated for that purpose. Of the funds regularly appropriated each year, a portion (specified in the substantive legislation) may be spent for confidential purposes.

Fourth, there are cases where substantive authority exists for confidential spending but Congress does not appropriate funds. The authority is latent, awaiting the necessary appropriation.

The existence of four categories makes it difficult to locate confidential funds. To look through appropriation acts would uncover only a portion. It is not always clear from the act that the funds may be spent with certificates. Occasionally a marginal note or a citation in the appropriation language will refer the reader to a statute that expressly states the confidentiality. Often it is necessary to rely on staffers in the Appropriations Committees or in the agencies to make the connection between authorizing language and an appropriation account.

A GAO publication, Legislation Relating to the Functions and Jurisdiction of the General Accounting Office (Jan. 1971, with Jan. 1973 supplement), is a helpful guide. Chapter C identifies the various accounts that restrict auditing authority. We contemplated a run through the computer, but an initial search disclosed that the word "certificate" appeared in the U.S. Code 3,107 times. Combining that with the word "account" reduced the number to 1,817, still too large a number to justify a run, particularly since there are some confidential accounts which do not use the word certificate.

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This report does not include funds for the U.S. Intelligence Community (Central Intelligence Agency, National Security Agency, and others). Nor does it cover certain nonappropriated funds, such as the funding of the Federal Reserve System. It relies on interest derived from Government securities in its portfolio; expenditures are not audited by GAO.